STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59620

STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59620

REVISED CODES OF MONTANA

VOLUME 5

Part 1

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5 (PART 1) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

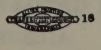
and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



Copyright © 1967, 1969, 1971 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1973 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 5 (Part 1)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1967

Arts council, state, 82-3601 to 82-3609.
Bond Validating Act, 79-2001 to 79-2004.
Claims against state, assignment, 83-901 to 83-904.
Criminal investigation division, 82-414 to 82-420.
Entomologist, state, 82-804.1 to 82-804.4.
Glendive mental retardation center, 80-2310 to 80-2312.
Juvenile correctional institutions, 80-1410 to 80-1413.
Juvenile reception and evaluation center, 80-1704.
Law enforcement, teletypewriter communication system, 82-3901 to 82-3906.
Legislative Audit Act, 79-2301 to 79-2312.
Mental health programs and centers, 80-2401.1, 80-2405 to 80-2411.
Planning and Economic Development Act, 82-3701 to 82-3709.
Post-Attack Resource Management Act, 77-1501 to 77-1508.
Post-Enemy-Attack Continuity in Government Act, 82-3801 to 82-3809.
Public contractors delinquent in performance, 82-1927, 82-1928.
Residence of public contractor, determination, 82-1925.1.
State building program, scheduling, 78-910.
State fire marshal, promulgation of rules, 82-1202.1, 82-1202.2.
State land resources, development, 81-2401 to 81-2408.
State lands, equalization payments to counties, 81-1115 to 81-1121.

ENACTED IN 1969

After care division, department of institutions, 80-1414 to 80-1416.
Archives for preservation of records, 82-3207 to 82-3209.
Bond Validating Act, 79-2001 to 79-2004.
Contractors with state, 82-4101 to 82-4104.
General fund, reimbursement for cost of central services, 79-2401 to 79-2415.
Governor-elect, orderly transition of power to, 82-1311 to 82-1314.
Reconstruction of capitol, construction of supreme court building, 78-1201 to 78-1209.
Reports of state agencies to governor, 82-4001, 82-4002.
Soil and water conservation districts, 76-220 to 76-233.

ENACTED IN 1971

Administrative Procedure Act, 82-4201 to 82-4225.
Bond Validating Act, 79-2001 to 79-2004.
Capitol building and planning committee, 78-1301 to 78-1304.
Communications division in department of administration, 82-3323 to 82-3325, 82-3327 to 82-3331.
Employment security commission buildings, 78-1011 to 78-1030.
Governor's emergency and disaster fund, 79-2501 to 79-2503.
Insurance of state property on deductible plan, 78-1102, 78-1103.
Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.
Interstate compact on mental health, 80-2412.
Mentally retarded persons,
    Community-centered programs and services, 80-2607 to 80-2610.
    State division of mental retardation, 80-2601 to 80-2606.
Reorganization of state executive branch, 82A-101 to 82A-2102.
State institutions,
    Alcohol or drugs, furnishing to inmates or patients as misdemeanor, 80-1418.
    Removal of patient or inmate without authority as misdemeanor, 80-1417.
Veterans administration center at Fort Harrison, state jurisdiction, 83-114.

ENACTED IN 1973

Antiquities, preservation, 81-2501 to 81-2514.
Bond Validating Act, 79-2001 to 79-2004.
County attorneys, training programs for, 82-421 to 82-423.

NEW LAWS IN VOLUME 5 (Part 1) (Continued)

Deposits of public funds, security for, 79-307.
Electrical inspection functions transferred to electrical board, 82A-1607.
Executive branch of government, continuing study and reports, 82-1315.
Gas and oil royalties received from United States, portion paid into highway account, 79-211.
Gubernatorial succession, 82-1304.1 to 82-1304.5.
Hail insurance board transferred to department of agriculture, 82A-304.1.
Indian lands, assistance in development of coal on, 82-2705.
Interstate nuclear compact, 82-4401 to 82-4403.
Investment program for public funds, 79-308 to 79-311.
Land department of state, functions, 82A-1101.1.
Lieutenant governor, 82-1702.1 to 82-1702.3.
Liquor control board abolished and functions transferred, 82A-1807, 82A-1808.
Mined land reclamation advisory committee abolished, 82A-1512.
Occupational health advisory committee abolished, 82A-1011.
Outfitters' council created, 82A-2005.
Personnel appeals, board of, 82A-1014.
Rules of administrative agencies, legislative review, 82-4203.1.
Sanitarian advisory council abolished, 82A-610.
Soil conservation committee abolished, 82A-1507.1.
Sovereign immunity abolished, 83-706.1.
State insurance plan, 82-4301 to 82-4309.
Tort claims against state or political subdivisions, 82-4310 to 82-4327, 83-701.
Tramway functions transferred, 82A-2005.
Treasurer's office in department of administration for administrative purposes, 82A-214.

AMENDMENTS IN VOLUME 5 (Part 1)

Adjutant general, 77-117, 77-120.
Administration, state department, 82-3303, 82-3306, 82A-202, 82A-214.
Aging problems, state committee, 82-3501 to 82-3505.
Arts council, 82-3606.
Attorney general's duties, 82-401.
Auditor's fiscal duties, 79-101, 79-102, 79-108, 79-109.
Bees and apiaries, 82-805 to 82-809, 82-811, 82-814.
Bonds,
    Long-range building program bonds, 79-2201 to 79-2205.
    Validating Act, 79-2002.
Budget estimates, 79-1013.
Buildings, construction by state, 82-3314, 82-3316, 82-3317, 82-3319.
Business regulation, department of, 82A-404.
Central services rendered state agencies, reimbursement for, 79-2411.
Civil defense, 77-1304.
Commitment to juvenile facility, 80-2204.
Conservation districts, 76-101, 76-103 to 76-111, 76-114, 76-115, 76-117.
    Assessments and funds, 76-201, 76-205 to 76-210, 76-215, 76-216, 76-222 to 76-226.
Continuity in government after enemy attack, 82-3801 to 82-3803.
Contractor's deposits for withdrawal of retained payments, 82-4101.
Controller, state, 79-1012, 82-109, 82-109.2, 82-110, 82-111.
Criminal investigation division, 82-414 to 82-420.
Deposit of state funds, 79-301, 79-306.
District court jurisdiction of actions against state, 83-701.
Examiner, state, 82-1002, 82-1005, 82-1007 to 82-1011.
Fire marshal, state, 82-1201 to 82-1202.2, 82-1208, 82-1209, 82-1211, 82-1218, 82-1231.
Fish and game department, 82A-2000.1, 82A-2003, 82A-2004.
Forester, state, 81-1403, 81-1411.
Grants and gifts, acceptance by state, 81-1101 to 81-1103.
Hail insurance, 82-1501, 82-1506, 82-1512, 82-1515, 82-1516, 82-1519.
Highways, department of, 82A-703.
Indian affairs, co-ordinator, 82-2701 to 82-2703.
Justice, department of, 82A-1201 to 82A-1203, 82A-1205, 82A-1207, 82A-1209.
Legislative auditor, co-operation with, 79-1312.
Lieutenant governor acting as governor, 82-1703.
Military leave for national guardsmen and reservists employed by state, 77-157.
Militia, composition, 77-102.
Natural resources and conservation, department of, 82A-1509.
Printing, prices for state, 82-1149.

AMENDMENTS IN VOLUME 5 (Part 1) (Continued)

Prison, 80-1903, 80-1905, 80-1908 to 80-1912.
Professional and occupational licensing department, 82A-1602, 82A-1602.8, 82A-1605.
Purchasing department and agent, 82-1910, 82-1914, 82-1916 to 82-1918, 82-1922, 82-1924 to 82-1926.
Records of state, preservation, 82-3209.
Reorganization of executive branch, general provisions, 82A-101 to 82A-112, 82A-115 to 82A-122.
Reports by state agencies to governor, 82-4002.
Revenue department, 82A-1801, 82A-1803, 82A-1804.
Secretary of state's duties, 82-2202, 82-2208.
State institutions,
- Appropriation of income from permanent funds, 79-601.
- Boulder river school and hospital, 80-2303 to 80-2309.
- Child released from juvenile facility, continuing control, 80-1415.
- Deaf and blind, 80-105, 80-107.
- Department of institutions, 80-1403 to 80-1405, 82A-802, 82A-803.
- Eastmont training center, 80-1403.
- Funds and revolving accounts, 79-602, 79-603.
- Galen state hospital, 80-1701 to 80-1703.
- Glendive mental retardation center, 80-2310, 80-2312.
- Institutionalized persons, payment for care of, 80-1601, 80-1603.
- Payment for care of residents, 80-1601.
- Vocational and industrial schools, 80-2202 to 80-2206, 80-2209 to 80-2212.
- Warm Springs state hospital, 80-2401 to 80-2404.

State lands,
- Administration of lands, 81-2302.
- Agricultural and grazing leases, 81-402, 81-404, 81-405, 81-407, 81-412 to 81-416, 81-418, 81-419, 81-421, 81-421.1, 81-422, 81-423, 81-424, 81-426, 81-428, 81-433, 81-436.
- Board of land commissioners, 81-103, 81-104, 81-106.
  - members and employees ineligible to purchase or lease state lands, 81-1110.
- Classification of lands, 81-302.
- Coal mining leases and permits, 81-501, 81-502, 81-506, 81-508, 81-510.
- Definition of terms, 81-102.
- Department of state lands, 81-105, 81-107, 81-108, 82A-1101, 82A-1104.
  - officers and employees ineligible to purchase or lease state lands, 81-1110.
- Development of land resources, 81-2402 to 81-2408.
- Equalization payments to counties, 81-1115 to 81-1119, 81-1121, 81-1122.
- Exchange of land with United States and counties, 81-304.
- Exchange of timbered or burned over land, 81-2201 to 81-2205.
- Grants and gifts, acceptance by state, 81-1101 to 81-1103.
- Location and selection of federal grants, 81-301.
- Mining leases and prospecting permits, 81-601 to 81-608, 81-611 to 81-613, 81-616.
- Oil and gas leases, 81-1702 to 81-1702.2, 81-1705, 81-1706, 81-1712, 81-1716 to 81-1718, 81-1720, 81-1726, 81-1728 to 81-1731.
- Public purposes, sales and easements for, 81-801 to 81-803.
- Sale of lands, 81-901, 81-902, 81-905, 81-908, 81-910, 81-912, 81-915, 81-917, 81-919, 81-921, 81-923, 81-924, 81-926 to 81-928, 81-930, 81-932.
- Stone, gravel and mineral leases and permits, 81-701, 81-702, 81-704.
- Stream and lake beds, defense of state title, 81-2305.
- Survey of lands, 81-2303.
- Timber sales, 81-1601, 81-1604.

Supreme court clerk, 82-501, 82-503.
Supreme court reports, 82-2002.
Teletype communications system for law enforcement made permanent, 82-3901 to 82-3906.
Treasurer of state, general fiscal duties, 79-201, 79-202.
Treasury fund structure, 79-410, 79-414, 79-415.
Trust and legacy fund, records and payments from, 79-1212, 79-1215.
Veterans' preference in public employment, 77-501.
Veterans welfare commission services, 77-1002.
War orphans' attendance at university without fees, 77-909.

TRANSFERRED IN VOLUME 5 (Part 1)

Cosmetology board, 82A-1602.8.
Escape from prison, costs of trial for, 80-1912.
State land commissioners and department, 81-105 to 81-108.

MONTANA REVISED CODES

TITLE 76—SOIL AND WATER CONSERVATION

Chapter
1. State conservation districts law, 76-101, 76-103 to 76-111, 76-114, 76-115, 76-117.
2. Conservation district assessments and funds, 76-201, 76-205 to 76-210, 76-215, 76-216, 76-220 to 76-233.

CHAPTER 1—STATE CONSERVATION DISTRICTS LAW

Section
76-101. Short title.
76-103. Definitions.
76-104. State conservation commission.
76-105. Creation of conservation districts.
76-106. Election of supervisors for each district.
76-107. Appointment, qualifications and tenure of supervisors.
76-108. Powers of districts and supervisors.
76-109. Adoption of land-use regulations.
76-110. Performance of work under the regulations by the supervisors.
76-111. Board of adjustment.
76-114. Discontinuance of districts.
76-115. Disposition of funds.
76-117. Change of district name—division and combination of districts.

76-101. Short title. This act may be known and cited as "the State Conservation Districts Law."

History: En. Sec. 1, Ch. 72, L. 1939; amd. Sec. 1, Ch. 73, L. 1961; amd. Sec. 1, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "Soil and Water" before "Conservation."

76-103. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) * * * [Same as parent volume.]

(3) "Commission" or "state conservation commission" means the agency created in section 76-104;

(4) * * * [Same as parent volume.]

(5) "Nominating petition" means a petition filed under the provisions of section 76-106 to nominate candidates for the office of supervisor of a conservation district;

(6) to (9) * * * [Same as parent volume.]

(10) "Land occupier" or "occupier of land" includes any person, firm, corporation, municipality or other entity who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two (2) publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

(12) "Qualified elector" means a qualified elector as defined in title 23, R.C.M. 1947.

History: En. Sec. 3, Ch. 72, L. 1939; amd. Sec. 2, Ch. 73, L. 1961; amd. Sec. 1, Ch. 146, L. 1967; amd. Sec. 2, Ch. 431, L. 1971.

Amendments

The 1967 amendment inserted "municipality or other entity" after "corporation" in subdivision (10).

The 1971 amendment deleted "soil and water" before "conservation" in subdivision (1); substituted "commission" for "committee" twice and deleted "soil" before "conservation" in subdivision (3); deleted "soil" before "conservation" in subdivision (5); added subdivision (12); and made a minor change in style.

76-104. State conservation commission. A. There is hereby established, to serve as an agency of the state, and to perform the functions conferred upon it in this act, the state conservation commission. The state conservation commission shall consist of seven (7) members. The following shall serve as members of the commission: The director of the state agricultural experiment station; the director of the state extension service; and the commissioner of the state department of agriculture. Four (4) members to be appointed by the governor from a list of twenty (20) submitted by the Montana association of conservation districts, at the next annual meeting of such association. In the formation of such list to be submitted to the governor, nominations shall be made by the convention and each district shall have one (1) vote. No person shall be eligible for the selection as a member unless he is at the time of selection or shall have been at some previous time a conservation district supervisor. From the list of twenty (20) names submitted the governor shall appoint one (1) person to serve a one-year term, one (1) person to serve a two-year term, one (1) person to serve a three-year term, and one (1) person to serve a four-year term; thereafter each year a list of five (5) names will be compiled in the same manner and submitted to the governor, from which list the governor shall appoint one (1) person to serve a four (4) year term on the state conservation commission. In the event a vacancy should occur for any reason among the members a successor shall be appointed by the governor to fill the unexpired term, which successor must be chosen from the last previous list submitted to the governor. The commission may invite the secretary of agriculture of the United States of America to appoint one (1) person to serve with the above-mentioned members as a nonvoting member of the commission. The commission shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold

such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The state conservation commission may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. Upon request of the commission for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, in so far as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the commission members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the commission may request.

C. The commission shall annually elect a chairman from its own membership. State commissioners shall continue as members of the state commission so long as they shall retain the offices by virtue of which they shall be serving on the commission. The appointed members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the commission shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex officio members of the commission shall receive no compensation for their services on the commission. Other members of the commission shall receive twenty dollars ($20) per day while on duty. All members of the state commission shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the commission. The commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

(2) * * * [Same as parent volume.]

(3) To co-ordinate the programs of the several conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) * * * [Same as parent volume.]

(5) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder,

and to encourage the formation of such districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939; amd. Sec. 1, Ch. 21, L. 1951; amd. Sec. 1, Ch. 47, L. 1967; amd. Sec. 1, Ch. 291, L. 1969; amd. Sec. 3, Ch. 431, L. 1971.

Amendments

The 1967 amendment substituted "twenty dollars" for "five dollars" in subsection C.

The 1969 amendment, in the fourth sentence of subsection A, deleted "farmer" before "members" near the beginning, substituted "Montana association of soil and water conservation districts" for "Montana soil conservation districts association," deleted "farmer" before "member" and "members" in the sixth and eighth sentences, respectively; in subsection B, deleted a former fourth sentence reading, "It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment"; and, in the third sentence in subsection C, deleted "farmer" before "members."

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in four instances; substituted "commission" for "committee" throughout the section; deleted "at Bozeman, Montana" after "experiment station" and after "extension service" in the third sentence of subsection A; deleted "soil and water" before "conservation districts" in the fourth sentence of subsection A; deleted "soil" before "conservation" in the sixth sentence of subsection A and in subdivisions D (1), (3), and (5); substituted "commissioners" for "committeemen" in the second sentence of subsection C; and made a minor change in style.

Cross-References

Committee functions transferred to division of conservation districts, sec. 82A-1506.

76-105. Creation of conservation districts. A. Any ten (10) qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the state conservation commission asking that a conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory described in the petition;

(3) * * * [Same as parent volume.]

(4) A request that the state conservation commission duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in such territory; and that the commission determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state conservation commission may consolidate all or any part of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state conservation commission, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All qualified electors within the limits of the territory

described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing held. After such hearing, if the commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the commission shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in section 76-102. The territory to be included within such boundaries need not be contiguous. If the commission shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the commission has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the commission in the determination of such administrative practicability and feasibility, it shall be the duty of the commission, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation

district of the lands below described and lying in the county(ies) of ————, ————, and ————" and "Against creation of a conservation district of the lands below described and lying in the county(ies) of ———— and ————" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the commission. All qualified electors within the boundaries of the territory, as determined by the state conservation commission, shall be eligible to vote in such referendum.

D. The commission shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The commission shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the commission shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the commission shall give due regard and weight to the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 76-102; provided, however, that the commission shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the commission shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the

three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state conservation commission pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as a governmental subdivision and a public body, corporate and politic, under this act; and that the commission has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state conservation commission, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the commission did duly determine that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed a majority of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the commission did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set forth the boundaries of the district as they have been defined by the commission.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state conservation commission, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record

the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state conservation commission as aforesaid, but in no event shall they include any area included within the boundaries of another conservation district organized under the provisions of this act.

G. After six (6) months shall have expired from the date of entry of a determination by the state conservation commission that operation of a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid and action taken thereon in accordance with the provisions of this act.

H. Petitions for including additional territory within an existing district may be filed with the state conservation commission, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The commission shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the qualified electors of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all qualified electors within the proposed additional area shall be eligible to vote.

(I). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 72, L. 1939; amd. Sec. 3, Ch. 73, L. 1961; amd. Sec. 4, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection A and the last sentence of subsection H, for "occupiers of lands lying" in the last sentence of subsection C and the last sentence of subsection E, for "occupiers of land" in the second sentence of subsection B, for "land occupiers" in the last sentence of subsection E and the third sentence of subsection H; substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil and water" before "conservation district" throughout the section; substituted "majority" for "sixty-five (65) per cent" in the proviso to subsection E and in the last sentence of the second paragraph of subsection F; deleted from the end of subsection C a former last sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in phraseology.

76-106. Election of supervisors for each district. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the state conservation commission to nominate candidates for supervisors of such districts. The commission shall have authority to extend the time within which nominating petitions may be filed. No such

nominating petition shall be accepted by the commission unless it shall be subscribed by ten (10) or more qualified electors within the boundaries of such district. Qualified electors may sign more than one (1) such nominating petition to nominate more than one (1) candidate for supervisor. The commission shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All qualified electors within the district shall be eligible to vote in such election. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The commission shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of votes therein, and shall publish the results thereof.

History: En. Sec. 6, Ch. 72, L. 1939; amd. Sec. 5, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "soil" before "conservation district" in the first sentence; substituted "state conservation commission" for "state soil conservation committee" in the first sentence; substituted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of land lying" in the third and seventh sentences, and for "land occupiers" in the fourth sentence; deleted the former eighth sentence reading, "Only such land occupiers shall be eligible to vote"; and made minor changes in style.

76-107. Appointment, qualifications and tenure of supervisors. The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five (5) or seven (7) supervisors, elected or appointed as provided herein.

In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, said board of supervisors, in addition to said five (5) elected supervisors, shall consist of two (2) appointed supervisors, making a total of seven (7) supervisors in such districts. The two (2) appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two (2) additional supervisors. The term of office of the appointed supervisors shall be three (3) years.

Where there are more than two (2) incorporated municipalities within a district, then the two (2) appointed supervisors shall represent all the municipalities and urban interests in the district, and no municipality shall have more than one (1) appointed supervisor residing therein.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining

supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one (1) or more supervisors, or to one (1) or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state conservation commission, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state conservation commission upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939; amd. Sec. 1, Ch. 4, L. 1959; amd. Sec. 2, Ch. 146, L. 1967; amd. Sec. 6, Ch. 431, L. 1971; amd. Sec. 1, Ch. 58, L. 1973.

Amendments

The 1967 amendment inserted "if there are no incorporated municipalities within the boundaries of said district" in the first paragraph; inserted second and third paragraphs identical with the present second and third paragraphs, except that "soil and water" preceded "conservation district"; and inserted "an elected" before "supervisor" in the third and fourth sentences of the fourth paragraph.

The 1971 amendment deleted all the insertions made by the 1967 amendment; inserted "or seven (7)" and "or appointed" in the first paragraph; substituted "state conservation commission" for "state soil conservation committee" in the last sentences of the third and fourth paragraphs, now the fifth and sixth paragraphs; and made minor changes in style and phraseology.

The 1973 amendment reinserted all of the language inserted by the 1967 amendment except the words "soil and water" before "conservation district."

76-108. Powers of districts and supervisors. A. A conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof,

shall have the following powers, in addition to others granted in other sections of this act:

(1) * * * [Same as parent volume.]

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R. C. M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) and (5). * * * [Same as parent volume.]

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) to (11) * * * [Same as parent volume.]

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R. C. M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939; amd. Sec. 2, Ch. 5, L. 1959; amd. Sec. 2, Ch. 291, L. 1969; amd. Sec. 7, Ch. 431, L. 1971.

Amendments

The 1969 amendment designated the first paragraph as subsection A; rewrote subdivision (2), for previous text of which see parent volume; in subdivision (3), inserted "R. C. M. 1947" after "section 76-102" and substituted "or" for "of" before "the necessary rights"; in subdivision (6), inserted "and" before "disposal of water"; inserted present subdivisions (12) through (14); and designated former subdivision (12) as subsection B.

The 1971 amendment deleted "soil" before "conservation" at the beginning of subsection A.

76-109. Adoption of land-use regulations. (A) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the qualified electors within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum.

(B) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. ————, prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. ————, prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert and [an] "X" mark in the square before one (1) or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All qualified electors within the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(C) The supervisors shall not have authority to enact such proposed ordinance into law unless a majority of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by a majority of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

(D) Any qualified elector within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented or repealed,

except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. to 4. * * * [Same as parent volume.]

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control erosion in the district, having due regard to the legislative findings set forth in section 76-102.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of land within the district.

History: En. Sec. 9, Ch. 72, L. 1939; amd. Sec. 8, Ch. 431, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "an" in the fourth sentence of subsection (B).

Amendments

The 1971 amendment substituted "water" for "soil" in the first sentence of subsection (A); deleted "soil" before "erosion" at the end of the first sentence of subsection (A); substituted "qualified electors" for "occupiers of lands lying" in the last sentence of subsection (A), for "occupiers of lands within" in the sixth sentence of subsection (B), and for "occupier of land" in the first sentence of subsection (D); deleted the former seventh sentence of subsection (B) reading, "Only such land occupiers shall be eligible to vote"; inserted "and water" before "resources" in subdivision (D) 5; deleted "soil" before "erosion" in subdivision (D) 5; deleted "lying" after "occupiers of land" in the last sentence of the final paragraph of subsection (D); and made a minor change in punctuation.

76-110. Performance of work under the regulations by the supervisors. (1) * * * [Same as parent volume.]

(2) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 76-109 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservances tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform

the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the defendant.

(3) * * * [Same as parent volume.]

(4) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such land into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per cent (5%) a year from the defendant. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(5) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per cent (5%) a year until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939; amd. Sec. 9, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "land occupier" after "the failure of the defendant" near the middle of subsection (2); substituted "defendant" for "occupier of such land" at the end of subsection (2) and at the end of the first sentence of subsection (4); and made minor changes in phraseology.

76-111. Board of adjustment. A. Where the supervisors of any district organized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the state conservation commission, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the state conservation commission and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members

of the state conservation commission and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars ($4) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operaton incurred by the board, upon the certificate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act, and with provisions of any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Any qualified elector may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the chairman of the state conservation commission. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state conservation commission shall have the right to appear and be heard at such hearing. Any qualified elector within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that

the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 72, L. 1939; amd. Sec. 10, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "qualified elector" for "land occupier" in the first sentence, and for "occupiers of land lying" in the fifth sentence, of subsection C; and made minor changes in style and punctuation.

76-114. Discontinuance of districts. (1) At any time after five (5) years after the organization of a district under the provisions of this act, any ten (10) qualified electors within the boundaries of such district may file a petition with the state conservation commission, praying that the operations of the district be terminated and the existence of the district discontinued. The commission may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof.

(2) Within sixty (60) days after such a petition has been received by the commission it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the ———— (name of the conservation district to be here inserted)" and "Against terminating the existence of the ———— (name of the conservation district to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All qualified electors within the boundaries of the district shall be eligible to vote in such referendum. No informalities in the conduct of such referendum or in any matters relative thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(3) The commission shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the commission shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the commission shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district.

(4) In making such determination the commission shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of land occupiers qualified electors eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on

erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 76-102; provided, however, that the commission shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

(5) Upon receipt from the state conservation commission of a certification that the commission has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state conservation commission, setting forth the determination of the commission that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state conservation commission shall be substituted for the district or supervisors as party to such contracts. The commission shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 76-110, nor the pendency of any action instituted under the provisions of such section, and the commission shall succeed to all rights and obligations of the district or supervisors as to such liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939; amd. Sec. 11, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "qualified electors" for "occupiers of land lying" in the first sentence of subsection (1), for "occupiers of lands lying" in the second sentence of subsection (2), for "occupiers of lands" near the beginning of subsection (4), and for "land occupiers" near the middle of subsection (4); substituted "state conservation commission" for "state soil conservation committee" throughout the section; substituted "commission" for "committee" throughout the section; deleted "soil" before "conservation" twice in the first sentence of subsection (2); and deleted a former third sentence of subsection (2) reading, "Only such land occupiers shall be eligible to vote."

76-115. Disposition of funds. A. Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of conservation districts organized under the provisions of this act shall be allocated by the state soil conservation commission among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said commission shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by said district.

B. Seventy-five per cent (75%) of all moneys which may be appropriated to pay the administrative and other expenses of conservation districts shall be allocated by the state conservation commission among all the districts organized, or to be organized, within the ensuing biennial fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five per cent (25%) of said moneys shall be allocated by the state commission among the districts on such basis of allocation as shall be fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of such moneys, the commission shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

C. The state conservation commission shall submit to the state board of examiners, on or before the first (1st) day of November of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the commission and to the districts; and the estimates of the commission as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939; amd. Sec. 12, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "soil" before "conservation districts" in the first sentences of subsections A and B; substituted "commission" for "committee" throughout the section; substituted "state conservation commission" for "state soil conservation committee" in the first sentences of subsections B and C; and made minor changes in style and phraseology.

76-117. Change of district name—division and combination of districts. (1) Petitions for changing the name of a district organized under this act may be filed with the state conservation commission. Any such petition shall be signed by a majority of the district supervisors and shall state the present name of the district and the proposed new name. If the commission determines that the proposed new name is not identical with or so similar to that of any other district in the state as to lead to confusion or uncertainty, it shall present a statement of such determination to the secretary of state, who shall issue to the district a certificate, under the seal of the state, evidencing the change of name of the district. Upon the issuance of such certificate, the supervisors of the district shall cause due notice to be given of the change of the name of the district.

(2) A petition may be filed with the state commission for the division of any district or the combination of any two (2) or more districts, or for the division of a district and the combination of any divided part thereof with any other district. Any or all of such actions may be initiated by the filing of a single petition with the commission. Any such petition shall be signed by a majority of the members of each of the governing bodies of the affected districts. The commission shall prescribe the form for such petition. Upon the filing of any such petition, the commission shall within thirty (30) days give due notice of public hearing upon such petition. All qualified electors within the affected districts, and all other interested parties, shall have the right to attend such hearing and to be heard. After such hearing, the commission shall determine whether the proposed division, the combination or division and combination of territory is administratively practicable and feasible. In making such determination the commission shall give due regard to the legislative determinations set forth in section 76-102 and to the considerations enumerated in section 76-105, to the extent applicable, relative to determining the practicability and feasibility of creating a district.

(3) If the commission shall determine that the proposed division or combination, or division and combination, is administratively practicable and feasible, the commission shall effect such proposed division, combination, or division and combination by filing with the secretary of state a statement certifying the changes made in the boundaries of the affected districts, together with any change in the name of such districts. If such determination is in the negative the commission shall make and record such determination and shall deny the petition. After six (6) months from the denial of such petition, a new petition may be filed involving any of such proposals.

(4) Upon the division of a district, the supervisors thereof shall allocate the property, rights and liabilities, including contractual obligations, of the district among the resulting parts of the district, giving due consideration to the proportionate size of each such divided part, the number of qualified electors and operating units and the degree and extent of soil erosion therein, and other relevant factors. A statement of such allocation shall be filed with the state commission within thirty (30) days after the notification of the commission's determination in favor of the

division of the district. Upon the failure of the supervisors to make, or to agree upon, such allocation, it shall be made by the commission after such hearing as the commission may deem necessary, and with due regard for the standards set out in this paragraph for making such allocations.

History: En. 76-117 by Sec. 1, Ch. 46, L. 1951; amd. Sec. 1, Ch. 41, L. 1959; amd. Sec. 13, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "state conservation commission" for "state soil conservation committee" in the first sentence of subsection (1); substituted "commission" for "committee" throughout the section; substituted "qualified electors" for "occupiers of lands" in the sixth sentence of subsection (2), and for "land occupiers" in the first sentence of subsection (4); and made minor changes in phraseology and style.

CHAPTER 2—CONSERVATION DISTRICT ASSESSMENTS AND FUNDS

Section

76-201. Notice of organization of district filed.
76-205. Division between counties of money to be raised by regular and special assessment.
76-206. Expenses to be covered by estimate.
76-207. Regular and special assessments.
76-208. Maximum regular assessment.
76-209. Levy of regular and special assessment.
76-210. Computation of rate of assessment.
76-215. Depository of district funds.
76-216. Receipt and crediting of district funds—responsibility on bond.
76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants.
76-221. Investment of funds in interest-bearing securities authorized—conversion into cash.
76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit.
76-223. Issuance of bonds authorized—other financing—special elections.
76-224. Establishment of project areas upon petition—special assessments.
76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation.
76-226. Protests against proposed projects or creation of project area.
76-227. Description of work or project area.
76-228. District area included in project area—administration of affairs.
76-229. Estimates of expenses of project area—financing by assessments.
76-230. Federal authority unaffected.
76-231. Special assessments a lien.
76-232. Assessments unaffected by misnomers and mistakes relating to ownership.
76-233. Duty to maintain improvements.

76-201. Notice of organization of district filed. The supervisors of a conservation district shall, within ten (10) days after the creation of the district, or within thirty (30) days after the effective date of this act, cause a notice declaring the district organized to be filed for record in the office of the county clerk and recorder of each county in which any portion of the district is situated.

History: En. Sec. 1, Ch. 253, L. 1963; amd. Sec. 3, Ch. 291, L. 1969; amd. Sec. 14, Ch. 431, L. 1971.

Amendments

The 1969 amendment inserted "and water" before "conservation district."

The 1971 amendment deleted "soil and water" before "conservation district."

76-205. Division between counties of money to be raised by regular and special assessment. If the district lies in more than one county the supervisors of the district shall divide the amount of the estimate of the

regular assessment in the proportion to the value of the land in the district lying in each county. The value shall be determined from the last assessment rolls of the counties. The supervisors shall furnish the boards of county commissioners of each of the respective counties a statement of the part of the estimate apportioned to the county. The estimates of the special assessments shall be divided in proportion to the value of land lying within the project area.

History: En. Sec. 5, Ch. 253, L. 1963; amd. Sec. 4, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "of the regular assessment" after "amount of the estimate" in the first sentence; and added the last sentence.

76-206. Expenses to be covered by estimate. The total amount of the estimate shall be sufficient to raise the amount of money necessary during the ensuing year to pay the incidental expenses of the district.

History: En. Sec. 6, Ch. 253, L. 1963; amd. Sec. 5, Ch. 291, L. 1969.

Amendments

The 1969 amendment deleted provisions requiring that estimate be sufficient for costs of work during ensuing year, estimated cost of repairs to and maintenance of property and works and estimated expenses of any action or proceeding to which district was or might be a party, including the cost of employing engineers and attorneys.

76-207. Regular and special assessments. Assessments levied pursuant to this act shall be known as regular and special assessments.

History: En. Sec. 7, Ch. 253, L. 1963; amd. Sec. 6, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "and special" before "assessments."

76-208. Maximum regular assessment. The regular assessment in any one (1) year shall not exceed one and one-half (1½) mills on the dollar of total taxable valuation of real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. The valuation shall be determined according to the last assessment roll.

History: En. Sec. 8, Ch. 253, L. 1963; amd. Sec. 3, Ch. 152, L. 1965; amd. Sec. 7, Ch. 291, L. 1969; amd. Sec. 15, Ch. 431, L. 1971.

Amendments

The 1969 amendment increased the assessment from "one-half (½) of one (1) mill" to "one and one-half (1½) mills" and substituted "district" for "county" in the first sentence.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" at the end of the first sentence.

76-209. Levy of regular and special assessment. The board of county commissioners of each county in which there lies any portion of the district may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district. It shall be known as the "———— (name of district) conservation district regular assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

The board of county commissioners of each county in which there lies any portion of a project area may, annually, at the time of levying county taxes, levy an assessment on the taxable real property within the project area, not to exceed three (3) mills. It shall be known as "..... (name of the project area) special assessment," and shall be sufficient to raise the amount reported to them in the estimate of the supervisors.

History: En. Sec. 9, Ch. 253, L. 1963; amd. Sec. 4, Ch. 152, L. 1965; amd. Sec. 8, Ch. 291, L. 1969; amd. Sec. 16, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "district" for "county" after "real property within the" in the first sentence; in the second sentence, substituted "soil and water conservation district regular assessment" for "soil conservation district assessment" and deleted a proviso at the end reading, "provided, however, that income from the levy of the assessment provided in this act for any single district shall not exceed one thousand dollars ($1000)"; and added the second paragraph.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" at the end of the first sentence of the first paragraph.

76-210. Computation of rate of assessment. The board of county commissioners shall determine the rate of assessment by deducting fifteen per cent (15%) for anticipated delinquencies from the total assessed value of the taxable real property in the district except that cities that voted to be included in a district prior to July 1, 1971, shall, by a majority vote of the council, be excluded from the district and then dividing the sum required to be raised by the remainder of the total assessed value. If a fraction of a cent occurs in a valuation of one hundred dollars ($100) it shall be taken as a full cent.

History: En. Sec. 10, Ch. 253, L. 1963; amd. Sec. 5, Ch. 152, L. 1965; amd. Sec. 9, Ch. 291, L. 1969; amd. Sec. 17, Ch. 431, L. 1971.

Amendments

The 1969 amendment substituted "district" for "county" and inserted "that" before "within incorporated cities" in the first sentence.

The 1971 amendment substituted "except that cities * * * from the district" for "except that within incorporated cities and towns" in the first sentence.

76-215. Depository of district funds. The treasury of the principal county is the depository of all of the county tax funds of the district.

History: En. Sec. 15, Ch. 253, L. 1963; amd. Sec. 10, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "funds."

76-216. Receipt and crediting of district funds—responsibility on bond. The treasurer of the principal county shall receive and receipt for all county tax money of the district and place the same to the credit of the district. He is responsible on his official bond for the safekeeping and disbursement, in the manner provided in this act, of the money of the district held by him.

History: En. Sec. 16, Ch. 253, L. 1963; amd. Sec. 11, Ch. 291, L. 1969.

Amendments

The 1969 amendment inserted "county tax" before "money of the district" in the first sentence.

76-220. District authorized to borrow money—pledging credit of district or issuance of warrants—levy for repayment—limitation on warrants. If after the levy of the annual assessments for the current year, the board finds that because of some unusual or unforeseen cause, funds raised through the collection of the assessments, and from other sources, will not be sufficient for the proper maintenance and operation of the district, and the works therein, the board may borrow additional funds needed to an amount not to exceed fifty cents ($.50) per acre for the lands within the district and may pledge the credit of the district for the payment of the same, or the board may request the county commissioners to issue and register warrants in anticipation of further collections. The board shall include in the levy for the ensuing year the amount required to pay the loan or to retire the warrants. The warrants shall not exceed ninety per cent (90%) of the assessment for the year.

History: En. Sec. 12, Ch. 291, L. 1969.

76-221. Investment of funds in interest-bearing securities authorized—conversion into cash. The board of supervisors shall have the power and authority to direct the investment of funds in a sinking fund in interest-bearing securities whenever in their judgment the same may be to the best interests of the district. But, all such securities shall be converted into cash in time to meet the principal on the bonds, payable from such sinking fund promptly at their maturity.

History: En. Sec. 13, Ch. 291, L. 1969.

76-222. Investment of unneeded surplus funds—deposit of funds with depository or bank—surety bond or pledge of securities to ensure payment of deposit. The board of supervisors of a conservation district may invest any surplus funds of the district, except county tax funds, not needed for immediate use in the operations of the district or its activities, or to pay bonds or coupons, or to meet current expenses, in interest-bearing bonds or securities of the United States or of any agency of the United States if the bonds are guaranteed by the United States, or in bonds of the state of Montana or any county or municipal corporation in said state. The board of supervisors of said district may require any funds of the district to be deposited with such depository or bank as may be designated by the board, and likewise shall have authority to require the treasurer of the district to take from such depository a bond with corporate surety to ensure payment of any such deposit, or to require such depository to pledge securities of the same kind as the district is authorized to invest its funds in, to ensure payment of any such deposit.

History: En. Sec. 14, Ch. 291, L. 1969; amd. Sec. 18, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "soil and water" before "conservation district" near the beginning of the first sentence.

76-223. Issuance of bonds authorized—other financing—special elections. Whenever a board of supervisors deems it necessary, it may issue bonds payable from revenues, assessments, or both, or the district may

use other financing as provided for by this act for the cost of works. The board of supervisors may call a special election to vote upon the proposition of issuing the bonds or may submit the proposition as a special question at a regular or general election. The notice of the election and the election itself shall be carried out in accordance with section 76-225 of this act. If from the returns of the election it appears that the majority of votes cast at such election were in favor of and assented to the incurring of the indebtedness, then the board of supervisors may, by resolution, provide for the issuance of such bonds. The authorization of such undertaking, the form, and content shall be carried out in accordance with section 11-2404 of the Municipal Revenue Bond Act of 1939. Validity of such bonds, use of revenue, and refunding shall be in accordance with the provisions of sections 11-2406, 11-2410, and 11-2414 of the Municipal Revenue Bond Act of 1939. Any bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 15, Ch. 291, L. 1969; amd. Sec. 19, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "section 76-225" for "section 18 [17]" in the third sentence.

76-224. Establishment of project areas upon petition—special assessments. Whenever the public interest or convenience may require and upon the petition of a county, city, town, or by a co-operative grazing association or other special purpose district, or by more than fifty per cent (50%) of the qualified electors affected thereby the board of supervisors is hereby authorized and empowered to establish project areas for carrying out projects to accomplish one (1) or more of the purposes of the district and within which area special assessments can be made for carrying out project purposes.

History: En. Sec. 16, Ch. 291, L. 1969; amd. Sec. 20, Ch. 431, L. 1971.

Amendments

The 1971 amendment substituted "town" for "village"; substituted "qualified electors" for "freeholders"; and made minor changes in punctuation and style.

76-225. Hearing on petition to establish project area—report of supervisors—election on creation—filing notice of creation. Upon receipt of a petition to establish a project area the board or boards of supervisors shall cause due notice to be given of a public hearing on the petition. Prior to the hearing the board or boards of supervisors shall make, or cause to be made, an investigation of the need for establishment of the proposed project area and shall prepare a report of their findings. The report shall be presented and read at the hearing on the petition. If the board, or boards, of supervisors finds that it is not feasible, desirable or practical to establish the proposed project area it shall make an order denying the petition and shall state therein its reasons for so doing. If, however, the board finds that the project is desirable, proper and necessary, it shall grant the petition, establish the boundaries of the proposed project area and give due notice of an election to be held in the proposed

area for the purpose of determining whether or not the project area shall be created. The question shall be submitted to the electors by ballot on which the words "For creation of proposed project area" and "Against creation of proposed project area" shall appear, with a square before each proposition and directions to insert an "X" mark in the square before one or the other of said propositions as the voters may favor or oppose creation of the project area. No person shall be entitled to vote at the election unless such person possesses all the qualifications required of electors under Title 23, R. C. M. 1947, and resides within the boundaries of the proposed project area and the county in which he proposes to vote. If the majority of the votes cast at the election are in favor of creating a project area, the board, or boards, of supervisors shall create the project area and shall file with the county clerk and recorder in each county in which there lies a portion of the project area a notice of creation of the project area setting forth the purposes of the area and the boundaries thereof.

History: En. Sec. 17, Ch. 291, L. 1969; amd. Sec. 21, Ch. 431, L. 1971.

Amendments

The 1971 amendment deleted "and excluding those lands that will not be so benefited" after "proposed project area" in the fifth sentence; substituted the reference to Title 23 in the seventh sentence for "the general laws of the state"; substituted "resides" for "is the owner of taxable real property situated" in the seventh sentence; and made a minor change in phraseology.

76-226. Protests against proposed projects or creation of project area. At any time within fifteen (15) days after the date of the last publication of the notice of the hearing on the petition, any owner of property liable to be assessed for the project may protest against the proposed project or the creation of the project area or both. The protest must be in writing and be delivered to the secretary of the conservation district who shall endorse thereon the date of its receipt by him. At the public hearing on the petition the board of supervisors shall proceed to hear and pass upon all protests made and its decision shall be final and conclusive; except when owners or [of] more than fifty per cent (50%) of the land in the proposed project area protest the project. If owners of more than fifty per cent (50%) of the land protest the project, no further action may be taken for a period of six (6) months from the date of the hearing after which a new petition may be filed.

History: En. Sec. 18, Ch. 291, L. 1969; amd. Sec. 22, Ch. 431, L. 1971.

Compiler's Notes

The bracketed word "of" near the end of the section has been inserted by the compiler.

Amendments

The 1971 amendment deleted "soil and water" before "conservation" in the second sentence; and made minor changes in style and punctuation.

76-227. Description of work or project area. In all resolutions, notices, orders and determinations, it shall be sufficient to briefly describe the work or the project area, or both.

History: En. Sec. 19, Ch. 291, L. 1969.

76-228. District area included in project area—administration of affairs. A project area may include a part or all of any district or may

include areas in more than one (1) district. The affairs of a project area shall be administered by the board, or boards, of supervisors or their authorized agents.

History: En. Sec. 20, Ch. 291, L. 1969.

76-229. Estimates of expenses of project area—financing by assessments. When a project area has been created, the board, or boards, of supervisors shall estimate the expenses of the project area from the date of its establishment until the end of the ensuing fiscal year and before July 1, in each year thereafter shall estimate project area expenses for the fiscal year ensuing. Estimates of project area expenses may include revenue needed to pay the interest or principal of any bonded debt, costs of rights of way, easements, or other interest in property deemed necessary for the construction, operation and maintenance of any projects therein. The expense of the project area may, in the discretion of the board, or boards, of supervisors, be financed in whole from revenue received by regular assessments or by revenue received in part from regular assessments and in part from special assessments. Upon adoption of a budget covering necessary expenses, the board, or boards, of supervisors shall send a copy of such budget or apportionment thereof to the board of county commissioners and/or city auditor of each county and/or city in the project area. When the board, or boards, of supervisors has determined that a special assessment is necessary, the board of county commissioners of such county in which there lies any portion of a project area shall annually, at the time of levying county taxes, levy a special assessment of the taxable real property in the project area, not to exceed three (3) mills. It shall be known as the "..... (name of district) soil and water conservation district special assessment," and shall be sufficient to raise the income reported to them in the estimate of the supervisors. Each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all the lands to be assessed. Funds produced each year by this special tax levy shall be available until spent, and if this special tax levy in any year does not produce sufficient revenue to pay the project area expenses, a fund sufficient to pay the same may be accumulated. A special assessment to defray the expenses of a project area may be spread over a term of not to exceed forty (40) years.

History: En. Sec. 21, Ch. 291, L. 1969.

76-230. Federal authority unaffected. The provisions of this section shall not apply to the government of the United States or any department, bureau, or agency thereof, except to such extent as the government of the United States or any department, bureau, or agency thereof may desire to take advantage of its provisions, it being the express purpose and intent of this section to aid but not to interfere with the government of the United States or of any department, bureau, or agency thereof in any undertaking over which such federal authority desires to exercise full supervision and control. The provisions of this section shall not be construed to impair, limit, or repeal any right whatsoever, which the gov-

ernment of the United States or any department, bureau, or agency thereof has to full and complete jurisdiction, management, or control over projects over which such federal authority desires to exercise such rights, it being the purpose of this section expressly to subordinate any power of jurisdiction and to never interfere directly with such federal authority.

History: En. Sec. 22, Ch. 291, L. 1969.

76-231. Special assessments a lien. Any special assessment made and levied to defray the cost and expenses of any of the work enumerated in this act, together with any percentages imposed for delinquency and for cost of collection, shall constitute a lien against the property upon which such assessment is levied, and after the date levying such assessment, which lien can only be extinguished by payment of such assessment, with all penalties, costs and interest.

History: En. Sec. 23, Ch. 291, L. 1969.

76-232. Assessments unaffected by misnomers and mistakes relating to ownership. When under the provisions of this act special taxes and assessments are assessed against any lot or parcel of land as the property of a particular person, no misnomer of the owner or supposed owner or other mistake, relating to the ownership thereof, shall affect such assessment or render it void or voidable.

History: En. Sec. 24, Ch. 291, L. 1969.

76-233. Duty to maintain improvements. Whenever any project petitioned for, or created by the state or federal government, has been made, built, constructed, erected or accomplished as in this act provided, it is hereby made the duty of the board, or boards, of supervisors, under whose jurisdiction the project area was created, to adequately and suitably maintain and preserve said improvements and fully to keep the same in proper repair and operation by contract or otherwise, in the way or manner as the board shall deem suitable and proper.

History: En. Sec. 25, Ch. 291, L. 1969.

TITLE 77—SOLDIERS, SAILORS AND MILITARY AFFAIRS

Chapter
1. Militia, composition, enrollment—officers, general provisions, 77-102, 77-117, 77-120, 77-121, 77-157.
5. Soldiers and sailors preference in public employment, 77-501.
9. Veterans' free tuition at university of Montana, 77-909.
10. Veterans' welfare commission, 77-1002.
13. Civil defense, 77-1304.
15. Post-attack resource management, 77-1501 to 77-1508.

CHAPTER 1—MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

Section
77-102. Composition of the militia.
77-117. The adjutant general of the state—assistant adjutants general.
77-120. Duties of adjutant general—salary.
77-121. Officers to be commissioned by the governor.
77-157. Leave of absence of state employees attending training camp or similar training program.

77-102. (1331) **Composition of the militia.** The militia of the state of Montana shall consist of all able-bodied citizens of the United States residing within this state, and said militia shall be divided into two classes, the national guard of Montana and the unorganized militia.

History: En. Sec. 2, Ch. 191, L. 1919; re-en. Sec. 1331, R. C. M. 1921; amd. Sec. 1, Ch. 32, L. 1973.

Amendments

The 1973 amendment deleted the word "male" from the phrase "all able-bodied male citizens"; deleted the phrase "and all other able-bodied males who have or shall have declared their intention to become citizens of the United States"; and deleted "who shall be more than eighteen years of age, and except as hereinafter provided, not more than forty-five years of age."

77-117. (1346) **The adjutant general of the state—assistant adjutants general.** There shall be an adjutant general of the state of Montana, who shall be appointed by the governor, and shall have the rank of major general. He shall hold office for the term for which the governor appointing him shall have been elected, and until his successor shall have been appointed. He shall be selected from the active list of the national guard of this state and shall have been federally recognized in the rank of major or above immediately prior to his appointment. He shall have had at least ten (10) years of service as an officer of the active national guard of this state during the fifteen (15) years immediately prior to his appointment. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments. The salary of the adjutant general shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the adjutant general, any increase in the salary of the adjutant general must be approved by

the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry, provided, however, that no part of said salary shall be paid by the state when the adjutant general is on extended active duty with the United States military service or is receiving pay as a civilian employee of the federal government; provided that if, by reason of the call or draft of officers of the Montana national guard into the federal service, there are no officers of the national guard possessing the requisite qualifications as set forth above for appointment, then any officer of the national guard may be appointed as acting adjutant general.

The adjutant general shall establish, within the state headquarters of the Montana national guard, separate departments for the army national guard and the air national guard. Each department shall have a brigadier general at its head, who will be referred to as assistant adjutant general for Montana army national guard and assistant adjutant general for Montana air national guard. The assistant adjutants general shall be appointed by the adjutant general with the approval of the governor. One (1) shall be selected from the active list of the Montana army national guard and the other from the active list of the Montana air national guard, and each must have the qualifications set forth above for appointment as adjutant general. They shall perform such duties as are prescribed by the adjutant general.

History: En. Sec. 23, Ch. 191, L. 1919; re-en. Sec. 1346, R. C. M. 1921; amd. Sec. 1, Ch. 21, L. 1949; amd. Sec. 1, Ch. 26, L. 1955; amd. Sec. 1, Ch. 272, L. 1959; amd. Sec. 1, Ch. 74, L. 1963; amd. Sec. 5, Ch. 237, L. 1967.

Amendments

The 1967 amendment, in the first paragraph, substituted the sixth and seventh sentences and the portion of the eighth sentence preceding the proviso, for a sentence fixing the salary at $7,500.

Cross-References

Adjutant general continued as head of department of military affairs, sec. 82A-1401.

77-120. (1349) **Duties of adjutant general—salary.** The adjutant general shall be ex officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures are audited, allowed, and paid.

1. The adjutant general shall keep a roster of all active, reserve, and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall report as provided in section 2 [82-4002] of this act.

2 to 11. * * * [Same as parent volume.]

12. The annual salary of the assistant adjutant shall be in such amount as may be specified by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the assistant adjutant general, any increase in the salary of the assistant adjutant general must be approved by the board of examiners. Before approving any salary increase, the board of exam-

iners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 20, Ch. 191, L. 1919; re-en. Sec. 1349, R. C. M. 1921; subd. 12: En. Sec. 1, Ch. 118, L. 1947; re-en. Sec. 1, Ch. 20, L. 1949; subd. 13: Sec. 2, Ch. 118, L. 1947 as added Sec. 1, Ch. 20, L. 1949; amd. Sec. 2, Ch. 272, L. 1959; amd. Sec. 35, Ch. 177, L. 1965; amd. Sec. 6, Ch. 237, L. 1967; amd. Sec. 32, Ch. 93, L. 1969.

Amendments

The 1967 amendment substituted subparagraph 12 for one which read, "The annual salary of the adjutant general of the state of Montana shall be four thousand two hundred dollars ($4,200.00)"; and deleted subparagraph 13, which read, "The annual salary of the assistant adjutant general of the state of Montana shall be three thousand six hundred dollars ($3,600.00)."

The 1969 amendment, in subparagraph 1, substituted the reporting requirements of section 82-4002 for former provision requiring a printed biennial report of the operations and conditions of the organized militia to be submitted to the governor during December of each even-numbered year.

Cross-References

Adjutant general's functions transferred to department of military affairs, sec. 82A-1403.

Bonds of state officers and employees, sec. 6-105 et seq.

Department abolished and functions transferred, sec. 82A-1402(1).

77-121. (1350) **Officers to be commissioned by the governor.** All commissioned officers of the organized militia of Montana shall be appointed and commissioned by the governor. No person shall be so appointed and commissioned unless he shall be a citizen of the United States and of this state, and more than eighteen (18) years of age. Every commissioned officer shall hold office under his commission until he shall have been regularly appointed and commissioned to another grade or office, or until he shall have been regularly retired, discharged, dismissed, or placed in the reserve.

History: En. Sec. 21, Ch. 191, L. 1919; re-en. Sec. 1350, R. C. M. 1921; amd. Sec. 16, Ch. 423, L. 1971.

Amendments

The 1971 amendment reduced the age specified at the end of the second sentence from twenty-one to eighteen years.

77-157. Leave of absence of state employees attending training camp or similar training program. That any person who is a member of the organized national guard of the state of Montana or who is a member of the organized or unorganized reserve corps or forces of the United States army, navy, marine corps, or coast guard, which now exist or may be created at any time in the future by proper authority, and who is an appointee of or employee of the state of Montana, or any of its departments, or any county or city within the state, and who has been such appointee or employee for a period of six (6) months, shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in any calendar year for attending regular encampments, training cruises, and similar training programs authorized by the secretary of defense of the United States for the Montana national guard or by the proper legal authority in charge of the reserve corps or forces of the United States army, navy, marine corps, or coast guard while in attendance at such annual encampment, training cruise, and similar training program, or without the time being charged against him on his annual vacation.

History: En. Sec. 1, Ch. 160, L. 1937; amd. Sec. 1, Ch. 132, L. 1947; amd. Sec. 1, Ch. 113, L. 1971.

Amendments

The 1971 amendment inserted "and who has been such appointee or employee for

a period of six (6) months" and "for a period of time not to exceed fifteen (15) working days in any calendar year"; and substituted "secretary of defense" for "secretary of war."

CHAPTER 5—SOLDIERS AND SAILORS PREFERENCE IN PUBLIC EMPLOYMENT

Section
77-501. Purpose of act—Definitions—preference.

77-501. (5653) **Purpose of act—definitions—preference.** The purpose of this act is to provide for preference of veterans, their unremarried widows, and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(1) Definitions.

(a) The term "veterans" as herein used, means men and women who served in the armed forces of the United States, and who have been separated from such service upon conditions other than dishonorable, in time of war or declared national emergency as follows: the Civil War; the Spanish American War; the Philippine Insurrection; World War I, between April 6, 1917, and November 11, 1918, both dates inclusive; World War II, which term means such service between September 16, 1940, and December 31, 1946, both dates inclusive; the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive; and those honorably discharged veterans who have served on active military duty for more than one hundred eighty (180) days after January 31, 1955, or who were discharged or released because of a service-connected disability, including, but not limited to, those veterans serving because of the Vietnam Conflict.

(b). * * * [Same as parent volume.]

(2) Preference to appointment and employment.

* * * [Same as parent volume.]

(3) Credit for examinations.

When written or oral examinations are required for employment as above described, disabled veterans and their wives, their unremarried widows, and other dependents of disabled veterans, shall have added to their examination ratings a credit of ten points, and all other veterans, their wives, unremarried widows, and dependents shall have added to their examination ratings a credit of five points; provided that the fact that an applicant has claimed a veterans' credit shall not be made known to the examiners until ratings of all applicants have been recorded; after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit; provided further that the benefits of this subsection are in addition to and not in derogation of the preference in appointment and/or employment given by subsection (2) hereof.

(4) Eligibility.

* * * [Same as parent volume.]

(5) Enforcement of preference.

* * * [Same as parent volume.]

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947; amd. Sec. 1, Ch. 26, L. 1949; amd. Sec. 1, Ch. 120, L. 1955; amd. Sec. 1, Ch. 193, L. 1969.

Amendments

The 1969 amendment, in subdivision (1), item (a), substituted "December 31, 1946" for "September 2, 1945" as terminal date for service in World War II and added "and those honorably discharged veterans * * * because of the Vietnam Conflict"; deleted former item (c), which read, "The word 'per centum' means per centum of the total aggregate points of the examination hereinafter referred to"; and in subdivision (3), substituted "ten points" and "five points" for "ten per centum (10%)" and "five per centum (5%)" after "credit of."

Separability Clause

Section 2 of Ch. 193, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 9—VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section
77-909. War orphans' attendance to be without fees.

77-909. War orphans' attendance to be without fees. There shall be established under this act the authority of the state board of education to waive, the charges for the matriculation, tuition, any and all educational fees, for such children of members of the armed forces of the United States who served on active duty during World War II and/or the Korean or Vietnam conflicts and who, at the time of entry into such service, had legal residence in this state and who were heretofore, or shall hereafter be, either killed in action or shall have died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States, as are now attending or may hereafter attend any of the units of the greater university of Montana, provided:

(a) and (b). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 141, L. 1957; amd. Sec. 1, Ch. 150, L. 1965; amd. Sec. 1, Ch. 225, L. 1969.

Amendments

The 1969 amendment substituted "Korean or Vietnam conflicts" for "Korean conflict."

Cross-References

Board of regents to exercise powers and duties of board of education, sec. 75-5617 (2).

CHAPTER 10—VETERANS' WELFARE COMMISSION

Section
77-1002. Duty of commission.

77-1001. Veterans' welfare commission created.

Cross-References

Commission renamed and continued in department of social and rehabilitation services, sec. 82A-1905.

77-1002. Duty of commission. It shall be the duty of the commission and it shall have power to establish a state-wide service for discharged

veterans and their families; to actively co-operate with state and federal agencies having to do with the affairs of veterans and their families; and to promote the general welfare of all veterans and their families. In carrying out the purposes of this act the commission may employ a director, service officers, assistants, clerks, or other personnel, all of whom must be residents of the state of Montana, prescribe their duties and fix and pay their compensation; and establish a state headquarters and such other offices as may be necessary to carry out the purposes of this act. All male employees of the commission shall have served in the military forces of the United States during World War I, World War II, the Korean War, or the Vietnam Conflict, and shall have been honorably discharged therefrom; whenever possible female employees shall also be persons honorably discharged from service during World War I, World War II, the Korean War, or the Vietnam Conflict; preference for all appointments shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945; amd. Sec. 1, Ch. 92, L. 1971.

Amendments

The 1971 amendment inserted references to the Korean War and the Vietnam Conflict in two places in the third sentence.

CHAPTER 13—CIVIL DEFENSE

Section
77-1304. State civil defense agency.

77-1304. State civil defense agency. (a) There is hereby created in the state adjutant general's department, a civil defense agency, with a director of civil defense (hereinafter called the "director") who shall be the head thereof. The director shall be appointed by, and shall hold office at the pleasure of the governor, and shall be compensated at a salary to be fixed by the legislative assembly in the appropriation to the adjutant general. If the legislative assembly does not specify the maximum salary of the director of civil defense, any increase in the salary of the director must be approved by the board of examiners. Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The director shall devote his full time and energies to the duties of director of civilian defense including co-operation and co-ordination with the commander of the home guard.

(b) to (e). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 218, L. 1951; amd. Sec. 3, Ch. 220, L. 1953; amd. Sec. 7, Ch. 237, L. 1967.

Amendments

The 1967 amendment, in subsection (a), substituted "by the legislative assembly * * * and private industry" before "The director" for "by the governor, which salary however, shall not exceed six thousand six hundred dollars ($6,600.00) per year."

Cross-References

Agency abolished and functions transferred, sec. 82A-1402(2).

Director's position abolished and functions transferred, sec. 82A-1402(3).

77-1305. Civil defense advisory council.

Cross-References

Council abolished, sec. 82A-1404(1).

77-1306. Civil defense advisory council.

Compiler's Notes

Executive Reorganization Order 9-71, signed by the governor on November 26, 1971, placed responsibility for emergency health planning under this chapter in the hospital and medical facilities division, department of health and environmental sciences.

CHAPTER 15—POST-ATTACK RESOURCE MANAGEMENT

Section
77-1501. Citation of act.
77-1502. Legislative findings—policy of state.
77-1503. Definition of terms.
77-1504. State emergency resource planning committee—composition.
77-1505. Governor's powers and duties under act.
77-1506. Proclamation of emergency—governor's powers during emergency.
77-1507. Judicial inquiry as to emergency proclamation and facts.
77-1508. Penalty for violation of rules and regulations.

77-1501. Citation of act. This act may be cited as the "Post-attack Resource Management Act."

History: En. Sec. 1, Ch. 297, L. 1967.

Title of Act

An act to provide for the emergency management of resources.

77-1502. Legislative findings—policy of state. (1) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for, and respond promptly to, the problems created by an attack. Therefore, it is hereby found and declared to be necessary:

(a) To create an office of emergency resource management for the execution of a plan for emergency resource management;

(b) To confer upon the governor and upon the executive heads of governing bodies of political subdivisions of the state the emergency powers provided herein.

(2) It is further declared to be the purpose of this act and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available man power, resources, and facilities in an emergency.

History: En. Sec. 2, Ch. 297, L. 1967.

77-1503. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) "Emergency Resources Management Plan" shall mean that plan prepared by the state emergency resources planning committee, approved by the federal office of emergency planning and adopted by the governor, which sets forth the organization, administration, and functions for the

emergency management by the state government of essential resources and economic stabilization within the state. The plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the president of the United States, and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state plan will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(2) "Enemy attack" means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(3) "Political subdivision" shall mean any county, city, town, or township of the state.

History: En. Sec. 3, Ch. 297, L. 1967.

77-1504. State emergency resource planning committee—composition. (1) The governor may establish a state emergency resource planning committee (hereinafter referred to as the "state committee") and the office of state emergency planning director (hereinafter referred to as the "director"), and appoint to serve at his pleasure the members of such state committee and the director.

(2) The state committee shall consist of the governor, who shall be chairman, the director, other state officials designated by the governor, and persons representative of industry, commerce, labor, agriculture, civic, governmental, and professional groups designated by the governor. In the absence of the governor, the director shall act as chairman.

History: En. Sec. 4, Ch. 297, L. 1967.

Cross-References

Director's position abolished and functions transferred, sec. 82A-1402(5).

Office abolished and functions transferred, sec. 82A-1402(4).

Planning committee abolished, sec. 82A-1404(2).

77-1505. Governor's powers and duties under act. (1) The governor shall have general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(2) In performing his duties under this act, the governor is authorized to co-operate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(3) In performing his duties under this act, and to effect its policies and purpose, the governor is further authorized and empowered to make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this act within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History: En. Sec. 5, Ch. 297, L. 1967.

77-1506. Proclamation of emergency—governor's powers during emergency. (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a post-attack recovery and rehabilitation emergency. Any such proclamation shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(2) During the period when the proclamation issued pursuant to subsection (1) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this act, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend and enforce rules, regulations, and orders to:

(a) Control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;

(b) Prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) Take such other action as may be necessary for the management of resources following an attack.

(3) All rules, regulations, and orders issued pursuant to authority conferred by this act shall have the full force and effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be deemed a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this act, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised pursuant to a proclamation or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution

of the legislature or by declaration of the termination of the emergency by the president or by the congress; provided that the proclamation shall terminate automatically six (6) months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature.

History: En. Sec. 6, Ch. 297, L. 1967.

77-1507. Judicial inquiry as to emergency proclamation and facts. Every proclamation and the facts related therein issued under this act shall be subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the proclamation and whether such action was reasonable under the circumstances.

History: En. Sec. 7, Ch. 297, L. 1967.

77-1508. Penalty for violation of rules and regulations. Any person violating any of the rules, regulations or orders adopted and promulgated under section 6 [77-1506] of this act shall, upon conviction thereof, be subject to a fine of not to exceed ten thousand dollars ($10,000) or to a term of imprisonment of not to exceed five (5) years, or both.

History: En. Sec. 8, Ch. 297, L. 1967.

TITLE 78—STATE CAPITOL

Chapter
9. Future building needs, 78-910.
10. Employment security commission buildings, 78-1011 to 78-1030.
11. Insurance on state buildings, 78-1102, 78-1103.
12. Reconstruction and repair of public buildings and capitol building in Helena—construction of supreme court and law library building, 78-1201 to 78-1209.
13. Capitol building and planning committee, 78-1301 to 78-1304.

CHAPTER 7—STATE CAPITOL REPAIR AND RECONSTRUCTION

78-738. Employment of architects and engineers.

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

CHAPTER 9—FUTURE BUILDING NEEDS

Section
78-910. Scheduling of state building program.

78-910. Scheduling of state building program. The state controller shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

History: En. Sec. 1, Ch. 116, L. 1967.

Title of Act

An act to require the state controller to schedule the state's building program in such a manner as to minimize the importance of weather on construction and to stabilize the work opportunities of the construction labor force.

CHAPTER 10—EMPLOYMENT SECURITY COMMISSION BUILDINGS

Section
78-1011. Bond issue authorized for construction of addition to building.
78-1012. Architect—employment—construction and design.
78-1013. Bids—contractor's bond.
78-1014. Amount of bonds authorized.
78-1015. Interest rate—term—other provisions of bonds.
78-1016. Sale of bonds—registration.
78-1017. Payment of principal and interest.
78-1018. Employment security commission building interest and sinking fund.
78-1019. Purchase of bonds by board of land commissioners.
78-1020. Budget act not applicable.
78-1021. Bond issue authorized for erection of additional office buildings.
78-1022. Architect—employment—construction and design.
78-1023. Bids—contractor's bond.
78-1024. Amount of bonds authorized.
78-1025. Interest rate—term—other provisions of bonds.
78-1026. Sale of bonds—registration.
78-1027. Payment of principal and interest.
78-1028. Employment security commission building interest and sinking fund.
78-1029. Purchase of bonds by board of land commissioners.
78-1030. Budget act not applicable.

78-1001. Bond issue authorized, etc.

Cross-References

Name of commission changed, sec. 87-117.

78-1011. Bond issue authorized for construction of addition to building. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of constructing an addition to the employment security commission office building presently existing on the capitol building grounds, adjacent to the capitol building, namely on lots 9 through 24, inclusive in Block 20 of the Corbin addition to the city of Helena, County of Lewis and Clark, Helena, Montana, and for the purpose of landscaping and paving around said building.

History: En. Sec. 1, Ch. 418, L. 1971.

Title of Act

An act to provide for the issue and sale by the state board of examiners of bonds for the purpose of constructing an addition to the employment security commission building located on the capitol building grounds; designating the funds from which said bonds shall be paid; providing for an employment security commission building interest and sinking fund; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1012. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to prepare plans and specifications, and to proceed with the constructing of an addition to the presently existing employment security commission building on the state capitol grounds, said addition to be used as office facilities by the employment security commission within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 418, L. 1971.

78-1013. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of, and for the landscaping and paving around said addition to the employment security building, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contract.

History: En. Sec. 3, Ch. 418, L. 1971.

78-1014. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose of herein expressed shall not exceed the sum of four hundred ninety-nine thousand dollars ($499,000).

History: En. Sec. 4, Ch. 418, L. 1971.

78-1015. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the current and prevailing interest rate, said interest to be payable semiannually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and

shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 418, L. 1971.

78-1016. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 418, L. 1971.

78-1017. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to Section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following use of said addition to said building upon completion of erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of four hundred ninety-nine thousand dollars ($499,000).

History: En. Sec. 7, Ch. 418, L. 1971.

78-1018. Employment security commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said addition to the employment security building including the landscaping and paving around it.

History: En. Sec. 8, Ch. 418, L. 1971.

78-1019. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006 of the Revised Codes of Montana, 1947.

History: En. Sec. 9, Ch. 418, L. 1971.

78-1020. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 418, L. 1971.

Separability Clause

Section 11 of Ch. 418, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 418, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

78-1021. Bond issue authorized for erection of additional office buildings. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of purchasing land, landscaping and paving said land as is necessary and for the purpose of erecting employment security commission office buildings in the following locations:

Employment security commission (employment service building), Great Falls, Montana.

Employment security commission (employment service building), addition, Billings, Montana.

Employment security commission (employment service building), Missoula, Montana.

Employment security commission (employment service building), Helena, Montana.

History: En. Sec. 1, Ch. 419, L. 1971.

Title of Act

An act to provide for the issue and sale by the state board of examiners of long-term bonds for the purpose of erecting employment security commission office buildings within the state of Montana, designating the funds from which said bonds shall be paid; providing for employment security commission interest and sinking funds; enumerating the powers and duties of the state board of examiners in carrying out the provisions of this act; authorizing the state land board to purchase said bonds with moneys from the long-term investment funds; providing a savings clause; and providing an effective date.

78-1022. Architect—employment—construction and design. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ architects to prepare plans and specifications, and to proceed with the erection of buildings of suitable construction and design for use as employment security commission buildings within the limitations prescribed by the United States department of labor, manpower administration and the United States secretary of labor.

History: En. Sec. 2, Ch. 419, L. 1971.

78-1023. Bids—contractor's bond. The state board of examiners shall call for bids for the construction of said buildings and for the landscaping and paving around them, and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require each prime contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 419, L. 1971.

78-1024. Amount of bonds authorized. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of one million fifty-five thousand nine hundred and twenty-eight dollars ($1,055,928).

History: En. Sec. 4, Ch. 419, L. 1971.

78-1025. Interest rate—term—other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at the prevailing rate payable annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable five (5) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana.

History: En. Sec. 5, Ch. 419, L. 1971.

78-1026. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time, in such manner, and in such amounts as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 419, L. 1971.

78-1027. Payment of principal and interest. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only: All money credited to this state's account in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, and all money received from the United States secretary of labor and authorized for payment to provide office space for the central offices of the employment security commission at Helena, Montana, immediately following occupancy of said buildings upon completion of

erection, pursuant to Title III of the Social Security Act, as amended, shall be, and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act to the extent said money may be sufficient to pay the same; provided said bonds shall be issued and sold by said state board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums that may be accrued and available from said sources for erection of said building a total of one million fifty-five thousand nine hundred and twenty-eight dollars ($1,055,928).

History: En. Sec. 7, Ch. 419, L. 1971.

78-1028. Employment security commission building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the employment security commission building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection of said buildings including the landscaping and paving around them.

History: En. Sec. 8, Ch. 419, L. 1971.

78-1029. Purchase of bonds by board of land commissioners. The state board of land commissioners is hereby authorized to purchase the bonds provided for by this act with moneys from the long-term investment fund notwithstanding the provisions of sections 81-1001 and 81-1006, R. C. M. 1947.

History: En. Sec. 9, Ch. 419, L. 1971.

78-1030. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the Budget Act.

History: En. Sec. 10, Ch. 419, L. 1971.

Separability Clause

Section 11 of Ch. 419, Laws 1971 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

Effective Date

Section 12 of Ch. 419, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 18, 1971.

CHAPTER 11—INSURANCE ON STATE BUILDINGS

Section
78-1102. Deductible insurance plan for state buildings and contents.
78-1103. Administration of deductible insurance plan.

78-1102. Deductible insurance plan for state buildings and contents. A deductible plan of insurance may be established for use by the state in insuring state buildings and their contents.

History: En. Sec. 1, Ch. 86, L. 1971.

Title of Act

An act to provide a deductible plan of insurance for state buildings and their contents.

78-1103. Administration of deductible insurance plan. The administration of this act shall be placed in the department of administration with the co-operation of the insurance commissioner.

History: En. Sec. 2, Ch. 86, L. 1971.

CHAPTER 12—RECONSTRUCTION AND REPAIR OF PUBLIC BUILDINGS AND CAPITOL BUILDING IN HELENA—CONSTRUCTION OF SUPREME COURT AND LAW LIBRARY BUILDING

Section

78-1201. Borrowing of state funds authorized.
78-1202. Employment of architects and engineers—approval of plans and specifications.
78-1203. Acquisition of land—bids and contracts—bonds.
78-1204. Maximum borrowing power—deposit of moneys.
78-1205. Terms of bonds, indentures, and notes.
78-1206. Sale of bonds, indentures, and notes—registration and accounts.
78-1207. Funds available for repayment of obligations.
78-1208. Moneys deposited in sinking fund.
78-1209. Budget act inapplicable.

78-1201. Borrowing of state funds authorized. In order to provide for land acquisition for public buildings at the state capital; the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for the construction of a supreme court building and state library building, the state board of examiners of the state of Montana is authorized to borrow sums of money from time to time from the unpledged investment funds available to any state agency or division of government, and to issue bonds, indentures or notes therefor.

History: En. Sec. 1, Ch. 375, L. 1969.

Title of Act

An act authorizing the state board of examiners to borrow up to two million dollars ($2,000,000) for land acquisition for public buildings at the state capitol; for the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building of the state of Montana at Helena, Montana; for construction of a supreme court and law library building; providing for the issuance of bonds, indentures and/or notes; dedicating income from capitol building land grant for repayment of loans; enumerating the power and duties of the state board of examiners in carrying out the provisions of this act; and providing for a select committee of the house of representatives and senate relating thereto.

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

78-1202. Employment of architects and engineers—approval of plans and specifications. With the approval of the state board of examiners, the state controller is hereby authorized, directed and empowered to employ an architect or architects, an engineer or engineers for such period of time as he may deem proper for the purpose of making the necessary studies and preparing complete plans and specifications for the purposes set forth in section 1 [78-1201] of this act; to proceed with the reconstruction, improvement, remodeling, repair and furnishing of the state capitol building and to proceed with the construction of the supreme court

and law library building. The plans and specifications of said architect or architects, engineer or engineers shall be approved by a select committee comprised of four (4) members of the house of representatives, not more than two (2) from either political party, appointed by the speaker; and four (4) members of the senate, not more than two (2) from either political party, appointed by the committee on committees.

History: En. Sec. 2, Ch. 375, L. 1969.

78-1203. Acquisition of land—bids and contracts—bonds. The board of examiners and the state controller shall purchase or condemn the lands described in section 1 [78-1201] of this act upon the advice of the select committee. The state board of examiners shall call for bids for the construction of the supreme court building and the state library building, and for the reconstruction, improvement, remodeling, repair, and furnishing of the state capitol building and shall let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractors to give bonds to the state of Montana in such amounts as the board may determine, conditioned for the faithful performance of their duties and contracts.

History: En. Sec. 3, Ch. 375, L. 1969.

78-1204. Maximum borrowing power—deposit of moneys. The aggregate amount which the state board of examiners is authorized to borrow under this act for the purposes herein expressed shall not be in excess of the sum of two million dollars ($2,000,000). All moneys borrowed or realized from the sale of bonds authorized by this act shall be deposited in the capitol building program account, bond proceeds and insurance clearance fund.

History: En. Sec. 4, Ch. 375, L. 1969.

78-1205. Terms of bonds, indentures, and notes. The bonds, indentures and/or notes issued by the state board of examiners under authority of this act shall not bear interest at a rate in excess of four and one-half per cent (4½%) per annum payable semiannually. They shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty-five (25), as said board may specify. All bonds, indentures and/or notes shall be optional and redeemable at any time after the date of issue, at the option of the state board of examiners. Said bonds, indentures and/or notes shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. Coupons attached to any such bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 375, L. 1969.

78-1206. Sale of bonds, indentures, and notes—registration and accounts. Said bonds, indentures and/or notes shall be sold by the state

board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds, indentures and/or notes shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds, indentures and/or notes.

History: En. Sec. 6, Ch. 375, L. 1969.

78-1207. Funds available for repayment of obligations. The principal and interest of the bonds, indentures and/or notes authorized by this act shall be payable out of the following fund and from it only: As much as may be necessary from the income received subsequent to January 1, 1970, from the capitol building land grant shall be, and the same is hereby dedicated and appropriated for the repayment of the principal and interest of the bonds, indentures and/or notes provided for by this act.

History: En. Sec. 7, Ch. 375, L. 1969.

78-1208. Moneys deposited in sinking fund. To provide for the payment of the interest and principal of the bonds, indentures and/or notes authorized by this act, all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, indentures and/or notes shall be paid and deposited in the sinking fund in the state treasury.

History: En. Sec. 8, Ch. 375, L. 1969.

78-1209. Budget act inapplicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 375, L. 1969.

Separability Clause

Section 10 of Ch. 375, Laws 1969 read "Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof."

CHAPTER 13—CAPITOL BUILDING AND PLANNING COMMITTEE

Section
78-1301. Committee created—composition—meetings.
78-1302. Function of committee—factors to be considered in master plan.
78-1303. Report to legislature.
78-1304. Per diem and mileage.

78-1301. Committee created—composition—meetings. There is hereby created a committee to be composed of seven (7) members: two (2) members of the house of representatives, appointed by the speaker on a bipartisan basis; two (2) members of the senate, appointed by the committee on committees; on a bipartisan basis the state controller; the chairman of the city-county planning board for the city of Helena and county of Lewis and Clark, and the secretary of state. A chairman shall be selected

by the members at the first meeting which shall be on or about July 9, 1971. Subsequent meetings may be called by the chairman at his discretion.

History: En. Sec. 1, Ch. 232, L. 1971.

Compiler's Notes

The fifth line of this section is punctuated as it was in the enrolled act. However, it would appear that the first semicolon in the fifth line should have followed "bipartisan basis" rather than "committees."

Title of Act

An act to create a capitol building and planning committee, establishing functions and guidelines under the general supervision of this legislative council; and providing an immediate effective date.

78-1302. Function of committee—Factors to be considered in master plan. Function of the committee will be to establish a master plan for the orderly development of future state buildings in the state capitol area of the city of Helena, Montana. In evolving the master plan the committee shall take into consideration the following factors:

(a) The needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management and landscaping, including placement of statues, monuments, fountains or exterior lighting of buildings as may be deemed desirable for the beautification of the area.

(b) The ordinances, plans, requirements and proposed improvements of the city of Helena and the county of Lewis and Clark, including but not limited to zoning regulations, population trends and plans for rapid transit development.

(c) Any other factors which bear upon the orderly, integrated and co-operative development of the state, the city of Helena and the county of Lewis and Clark, of property in the area of the state capitol.

History: En. Sec. 2, Ch. 232, L. 1971.

78-1303. Report to legislature. The committee shall prepare a written report of its activities and recommendations and present the report to the succeeding legislature, under the general supervision of the legislative council.

History: En. Sec. 3, Ch. 232, L. 1971.

78-1304. Per diem and mileage. Legislative members are entitled to twenty dollars ($20) a day and mileage for days actually engaged in the work of the committee.

History: En. Sec. 4, Ch. 232, L. 1971.

Effective Date

Section 5 of Ch. 232, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

TITLE 79—STATE FINANCE

Chapter
1. General fiscal duties of state auditor, 79-101, 79-102, 79-108, 79-109.
2. General fiscal duties of state treasurer, 79-201, 79-202, 79-211.
3. Deposit and investment of state funds, 79-301, 79-306 to 79-311.
4. Treasury fund structure, 79-410, 79-414, 79-415.
6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-603.
10. State Budget Act, 79-1012, 79-1013.
12. Montana trust and legacy fund—unified investment plan, 79-1212, 79-1215.
20. Bond Validating Act, 79-2001 to 79-2004.
22. Long-range building program bonds, 79-2201 to 79-2205.
23. Legislative Audit Act, 79-2301 to 79-2312.
24. Reimbursement of general funds for costs of central services, 79-2401 to 79-2415.
25. Emergency and disaster fund, 79-2501 to 79-2503.
26. Interest on bonds and special assessments of political subdivisions, 79-2601 to 79-2603.

CHAPTER 1—GENERAL FISCAL DUTIES OF STATE AUDITOR

Section
79-101. State auditor—general fiscal duties.
79-102. Certificate of settlement.
79-108. Warrants—presentation—cancellation.
79-109. Issuance of duplicate warrant.

79-101. (151) **State auditor—general fiscal duties.** It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.

2. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.

3. To suggest plans for the improvement and management of the public revenues.

4. To keep an account of all warrants drawn upon the treasurer, and such other account and appropriation records that he determines to be essential for the support of the accounting records maintained in the office of the state controller.

5. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys, received by him, and credit him with all warrants drawn on and paid by him.

6. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, and the date issued.

7. In his discretion to examine and settle the accounts of persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

8. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

9. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

10. In his discretion to inspect the books of any persons charged with the receipt, safekeeping, or disbursement of public moneys.

11. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

12. In his discretion to examine the collection of moneys due the state, and institute suits in its name for official delinquencies in relation to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

13. In his discretion, to offset any amount due a state agency from a person or entity, against any amount owing such person or entity by any state agency. The state auditor may deduct from the claim, and draw his warrants for the amounts offset in favor of the respective state agencies to which due, and, for any balance, in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available shall be applied in such manner as the state auditor, in his discretion, shall determine. If, in the discretion of the state auditor, the person or entity refuses or neglects to file his claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of such person or entity; if approved by the state controller it shall have the same force and effect as though filed by such person or entity. The amount due any person or entity from the state or any agency thereof is the net amount otherwise owing such person or entity after any offset as in this section provided.

14. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

15. To authenticate with his official seal all warrants drawn by him, and all copies of papers issued from his office.

16. In his discretion promulgate rules and regulations regarding the distribution and processing of warrants issued.

17. In his discretion establish a cost accounting system to determine the unit cost of issuing and processing warrants and provide for a system of charges for services rendered in issuing and processing warrants for claims submitted by any department or agency of the state. No such charge shall be made for warrants issued against the general fund. Funds collected under this section for budgeted programs shall be deposited to the

credit of the general fund. Funds collected for new or unforeseen programs may be deposited to the credit of a revolving fund account and expended for the purposes of paying the processing expenses incurred as a result of the new program.

18. To collect and pay into the state treasury all fees received by him.

19. To perform such other duties as are prescribed by law.

20. In his discretion to establish, under the joint control of the state controller and the state auditor, a system of filing and storage of the original copy of claims paid by state warrant.

History: En. Sec. 420, Pol. C. 1895; re-en. Sec. 170, Rev. C. 1907; re-en. Sec. 151, R. C. M. 1921; amd. Sec. 1, Ch. 94, L. 1969. Cal. Pol. C. Sec. 433.

Amendments

The 1969 amendment deleted former subdivisions 2, 3, 6, 10, 18, and 19, for text of which see parent volume; redesignated former subdivisions 4 and 5 as 2 and 3; redesignated former subdivision 7 as 4 and substituted "and such other account * * * state controller" for "and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation"; redesignated former subdivision 8 as 5; redesignated former subdivision 9 as 6, and substituted "and the date issued" for "for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered"; redesignated former subdivision 11 as 7, and inserted "In his discretion" at the beginning; redesignated former subdivisions 12 through 15 as 8 through 11; redesignated former subdivision 16 as 12, and substituted "In his discretion to examine" for "To direct and superintend" at the beginning and deleted "all" before "moneys" and "debtors"; inserted new paragraph 13; redesignated former subdivision 17 as 14, and deleted ", and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof"; redesignated former subdivision 20 as 15, and deleted "drafts and" before "warrants drawn"; inserted new subdivisions 16 and 17; redesignated former subdivisions 21 and 22 as 18 and 19; and added new subdivision 20.

79-102. (152) **Certificate of settlement.** The certificate mentioned in subdivision 7, of section 79-101, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: En. Sec. 421, Pol. C. 1895; re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 152, R. C. M. 1921; amd. Sec. 2, Ch. 94, L. 1969. Cal. Pol. C. Sec. 434.

Amendments

The 1969 amendment substituted "subdivision 7" for "subdivision 11" before "of section 79-101."

79-107. Repealed.

Repeal

Section 79-107 (Sec. 427, Pol. C. 1895), relating to auditor's execution of an official bond, was repealed by Sec. 5, Ch. 94, Laws 1969.

79-108. (158) **Warrants — presentation — cancellation.** All warrants drawn by the state auditor on the state treasury shall be presented for payment within one (1) year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to the account from which it was drawn. Should the payee or legal owner of any canceled warrant present it for payment, or in the event the warrant has

been lost or destroyed, the payee present a claim for payment, after the lapse of one (1) year from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof, and the state treasurer is authorized to pay the new warrant. The state auditor shall furnish the state treasurer with a list of warrants canceled under the provisions of this section.

History: En. Sec. 1, Ch. 80, L. 1907; Sec. 178, Rev. C. 1907; re-en. Sec. 158, R. C. M. 1921; amd. Sec. 3, Ch. 94, L. 1969.

Amendments

The 1969 amendment rewrote this section to extend time for presenting warrants from six months to one year. For previous text, see parent volume.

79-109. (159) **Issuance of duplicate warrant.** A. The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and, except as herein provided, no such warrant shall be issued or delivered, except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant.

B. No bond of indemnity shall be required:

(1) When the payee is the United States government, a state of the United States, any agency, instrumentality or officer of the United States government or of a state, or any county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(2) When the owner or custodian is the state of Montana or any agency or officer thereof;

(3) When the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana; or

(4) When the amount of the lost or destroyed warrant is less than fifty dollars ($50);

Provided, however, that where the owner or custodian applies under the provisions of subsection (3) or (4) hereof, the application shall include an agreement to indemnify and hold harmless the state, its officers and employees, from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived.

History: En. Sec. 1, Ch. 19, L. 1909; re-en. Sec. 159, R. C. M. 1921; amd. Sec. 4, Ch. 94, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection A, inserted "except as herein provided" before "no such warrant" and deleted "by the state auditor" after "issued or delivered" in the second sentence; and added subsection B.

Repealing Clause

Section 5 of Ch. 94, Laws 1969 read "Section 79-107, R. C. M. 1947, is repealed."

Effective Date

Section 6 of Ch. 94, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 2—GENERAL FISCAL DUTIES OF STATE TREASURER

Section
79-201. State treasurer—general fiscal duties.
79-202. State moneys, how expended by treasurer.
79-211. Deposit of gas and oil royalties from federal government in highway account.

79-201. (174) **State treasurer—general fiscal duties.** The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and it is the duty of the state treasurer:

1. To receive and account for all moneys belonging to the state, not expressly required by law to be received and kept by some other person.

2. To issue receipts which must be consecutively numbered beginning with number one at the commencement of each fiscal year for all sums of money which shall be paid into the treasury, and to deliver a copy of every such receipt to the person making such payment, the state auditor and the state controller.

3. To pay warrants out of the funds upon which they are drawn.

4. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid.

5. To keep an account of all moneys received and disbursed.

6. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

7. To discharge such other duties as may be imposed upon him by law.

8. Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination and a safekeeping receipt may be accepted in lieu of the actual securities. Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R. C. M. 1921; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973. Cal. Pol. C. Sec. 452.

Amendments

The 1971 amendment inserted "The state treasurer shall be the custodian of all moneys and securities of the state unless otherwise expressly provided by law, and" at the beginning of the section; substituted "account for" for "keep" in subdivision (1); substituted "not expressly required by law" for "and not required" in subdivision (1); deleted a former subdivision (2), for text of which see parent volume; substituted a new subdivision (2) for former subdivision (3), for text of which see parent volume; redesignated former subdivisions (4), (5) and (6) as (3), (4) and (5); deleted "and in the order" before "in which they are drawn" at the end of subdivision (3); deleted "and file and preserve the same" from the end of subdivision (4); deleted former subdivisions (7), (8), (10) and (11) for text of which see parent volume; and redesignated former subdivisions (9) and (12) as subdivisions (6) and (7), respectively.

The 1973 amendment added subdivision 8.

Effective Date

Section 2 of Ch. 269, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 10, 1973.

79-202. (193) **State moneys, how expended by treasurer.** Except as herein provided no moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the state controller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer.

History: En. Sec. 2, Ch. 112, L. 1921; re-en. Sec. 193, R. C. M. 1921; amd. Sec. 6, Ch. 97, L. 1961; amd. Sec. 2, Ch. 152, L. 1971.

Amendments

The 1971 amendment inserted "Except as herein provided" at the beginning of the section; and substituted "except upon a claim duly approved by the state controller in accordance with the laws governing the expenditure of state moneys; however, interest and principal on the public debt may be paid by treasurer's check from the moneys pledged for such payment, and the provisions of this section shall not apply to warrants issued upon contingent revolving accounts that are in the custody of the state treasurer" at the end of the section for "save by virtue of unexhausted appropriations therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state controller, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department."

Repealing Clause

Section 3 of Ch. 152, Laws 1971 read "Sections 79-801, 79-804, 79-806, 79-807, 79-808, and 79-810, R. C. M., 1947, are repealed."

Effective Date

Section 4 of Ch. 152, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

79-208. (180) **Registry and interest on state warrants.**

Compiler's Notes

Section 79-801, referred to in this section, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-211. Deposit of gas and oil royalties from federal government in highway account. It shall be the duty of the state treasurer to pay one-half (½) of the moneys received from the treasurer of the United States as the state's share of gas and oil royalties under the act of Congress of February 25, 1920, to the state highway account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 246, L. 1973.

Title of Act

An act requiring the state treasurer to credit the state highway account in the earmarked revenue fund with moneys received under the act of Congress of February 25, 1920.

CHAPTER 3—DEPOSIT AND INVESTMENT OF STATE FUNDS

Section
79-301. Deposit of funds in the hands of the state treasurer.
79-306. State treasurer as treasurer of state agencies—deposits of moneys.
79-307. Security for deposits of public funds.
79-308. Unified investment program for public funds.
79-309. Investment funds.
79-310. Permissible investments.
79-311. Investment of local government funds.

79-301. (182) **Deposit of funds in the hands of the state treasurer.** (1) Under the direction of the board of investments, the state treasurer shall deposit public moneys in his possession and under his control in solvent banks located in the state, except as otherwise provided by law, subject to national supervision or state examination. The board of investments may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks and the board of investments, which rate shall be fixed semiannually during the months of July and January of each year.

(2) No such deposits in excess of the amount insured by the federal deposit insurance corporation shall be made unless the bank first delivers to the state treasurer or deposits in trust with some solvent bank as hereinafter provided, as security therefor, bonds or other obligations of the kinds listed in section 4 [79-307] of this act, having a market value at least equal to the amount of such deposits in excess of the amount so insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustees' receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustee have been approved by the board of investments.

(3) When moneys have been deposited, under the direction of the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any such deposit occurring from any cause other than his own neglect or fraud. The state treasurer shall deposit funds in such banks, and in such amounts as may be designated by the board of investments, and withdraw such deposits when instructed to by the board of investments. The state treasurer shall withdraw all deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law.

(4) Any bank pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The collateral so substituted shall conform to section 4 [79-307] of this act and have a market value at least sufficient for compliance with subsection (2) above. If the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository bank, a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository bank.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973.

Amendments

The 1969 amendment extended subsection (2) to include as authorized securities several different kinds of federal agency securities, state and county general obligation bonds from other states, and certain types of corporate bonds.

The 1973 amendment inserted "Under the direction of the board of investments" at the beginning of subsection (1); deleted "as designated by the state depository board, and no other" from the end of the first sentence of subsection (1); implemented the transfer of functions from the state depository board and the state examiner to the board of investments; deleted from the second sentence of subsection (1) a clause relating to the first rate-fixing

date; substituted "insured by the federal deposit insurance corporation" near the beginning of subsection (2) for "guaranteed or insured according to law"; substituted "bonds or other obligations of the kinds listed in section 79-307, having a market value at least equal to the amount of such deposits in excess of the amount so insured" in subsection (2) for an itemized list of acceptable securities; deleted subsection (3), for text of which see parent volume; redesignated subsections (4) and (5) as (3) and (4); deleted "through damage by the elements, or" before "from any cause" in the first sentence of subsection (3); deleted "or dishonorable conduct" at the end of the first sentence of subsection (3); substituted "shall withdraw" in the third sentence of subsection (3) for "shall have the authority . . . to withdraw"; deleted from subsection (3) a final sentence preserving the right of the board of land commissioners to invest in otherwise lawful securities; substituted the second sentence of subsection (4) for sentences requiring that substituted collateral "be approved by the state depository board at its next official meeting" and "be at least equal in principal amount to the securities for which substitution is made"; and made numerous minor changes in phraseology and style.

Cross-References

Depository board and treasurer's investment functions transferred, sec. 82A-205 (2).

79-303, 79-304. (182.1) **Repealed.**

Repeal

Sections 79-303 and 79-304 (Sec. 1, Ch. 64, L. 1935; Sec. 1, Ch. 81, L. 1937; Sec. 1, Ch. 68, L. 1941; Sec. 1, Ch. 101, L. 1945; Secs. 4, 5, Ch. 176, L. 1953; Sec. 10, Ch. 147, L. 1963), relating to investment of state funds, were repealed by Sec. 2, Ch. 205, Laws 1971.

79-306. (192) **State treasurer as treasurer of state agencies—deposits of moneys.** (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit daily all moneys, credits, evidences of indebtedness, and securities either in banks located in the city or town in which the agencies and institutions are situated if there is a qualified bank in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973.

Amendments

The 1973 amendment deleted from subsection (1) a second sentence requiring departments located in the capitol to make daily deposits with the treasurer; deleted "not located in the capitol" following "agencies and institutions" near the beginning of subsection (2); substituted "board of investments" for "state depository board" near the end of the first sentence in subsection (2); deleted "furnish indemnifying bonds" following "Such bank shall" near the beginning of the second sentence in subsection (2); inserted "in accordance with the provisions of sections 79-301 and 79-302" at the end of the second sentence in subsection (2); deleted the third sentence of subsection (2); added subsection (3); and made minor changes in style and phraseology.

79-307. Security for deposits of public funds. The following kinds of securities may be pledged to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for co-operatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(6) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due; and

(7) general obligation bonds of other states and of municipalities and counties of other states.

History: En. Sec. 4, Ch. 298, L. 1973.

Title of Act

An act to amend sections 79-301, 79-306, and 79-601, R. C. M. 1947, for the codification and general revision of the laws relating to the deposit of state funds and the unified investment program for public funds as required by article VIII, section 13 of the 1972 Montana constitution; and to repeal sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216, and sections 81-1001 through 81-1008, R. C. M. 1947; and amending section 79-1215, R. C. M. 1947.

79-308. Unified investment program for public funds. (1) The uniform investment program directed by article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter, and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(2) All state funds shall be invested and reinvested in securities enumerated in section 7 [79-310] of this act, to the maximum extent

consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) The board of investments may:

(a) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to sections 79-301 and 79-306;

(b) direct the sale of any securities in the program at their full and true value, when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(4) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund, and of the participation of each treasury fund account therein, and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(5) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund; and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds.

History: En. Sec. 5, Ch. 298, L. 1973.

79-309. Investment funds. For each treasury fund account into which state funds are segregated by the department of administration pursuant to section 79-413, individual transactions and totals of all investments shall be separately recorded to the extent directed by the department. However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest or devise from which the fund account originates to be invested shall be pooled in an account to be designated "Treasury Cash Account" and placed in one of the investment funds designated below. The share of the income for this account shall be credited to the general fund. If within the list hereinafter of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata. Separate investment funds shall be maintained as follows:

(1) the trust and legacy fund, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, article X, of the 1972 Montana constitution, and all money referred to in section 79-410(8);

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in Title 31, chapter 2;

(b) the public employees' retirement system described in Title 68;

(c) the game wardens' retirement system described in Title 68, chapter 14;

(d) the teachers' retirement system described in Title 75, chapter 62; and

(e) the industrial accident insurance program described in Title 92, chapter 11;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by section 79-410;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment, and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions; and

(5) such additional investment funds as may be expressly required by law, or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: En. Sec. 6, Ch. 298, L. 1973.

79-310. Permissible investments. (1) The following securities are permissible investments for all investment funds referred to in section 6 [79-309], except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under section 4 [79-307] of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one (1) nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in two hundred seventy (270) days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among current liabilities long-term debt maturing within one (1) year, of at least one and one-half (1½) to one (1); and had received net income averaging one million dollars ($1,000,000) or more annually for the preceding five (5) years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment

fund to exceed ten per cent (10%) of the book value of such fund, or would cause the commercial paper of any one corporation to exceed two per cent (2%) of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of five hundred million dollars ($500,000,000);

(e) interest-bearing deposits in banks located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property and first mortgages on unencumbered real property, provided that:

(i) no such mortgage shall be purchased unless:

(A) the principal amount of the loan secured by the mortgage is seventy-five per cent (75%) or less of the appraised value of the property; or

(B) thirty per cent (30%) or more of the loan secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(C) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed fifty per cent (50%) of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

(a) the corporation has assets of a value not less than ten million dollars ($10,000,000); and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least one and one-half (1½) times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least five (5) years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than two per cent (2%) of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the

corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed twenty per cent (20%) of the book value of such fund, or would cause the stock of one corporation to exceed one per cent (1%) of the book value of such retirement fund.

History: En. Sec. 7, Ch. 298, L. 1973.

79-311. Investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision having funds which are available for investment, and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner, may direct its treasurer to remit such funds to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

(2) A separate account, designated by name and number for each such participant in the fund, shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report shall be furnished to each participant having a beneficial interest in the pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction shall be furnished to any participant upon request.

(3) The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the pooled investment fund shall be subject to payment at any time from the fund upon request. Accumulated income shall be remitted to each participant at least annually.

(4) No order or warrant shall be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies, and if any such order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated, and the state treasurer shall be liable under his official bond for any amount not so reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973.

Repealing Clause

Section 9 of Ch. 298, Laws 1973 read "Sections 79-1201 through 79-1211, 79-1213, 79-1214, and 79-1216 and sections 81-1001 through 81-1008, R. C. M. 1947, are repealed."

CHAPTER 4—TREASURY FUND STRUCTURE

Section
79-410. Fund structure.
79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures.
79-415. Appropriation and disbursement of moneys from the treasury.

79-410. Fund structure. There are in the state treasury only the following funds:

(1) to (6). * * * [Same as parent volume.]

(7) Revolving fund. The revolving fund consists of moneys used to

(a) Defray reimbursable expenditures, and

(b) Supply working capital for enterprise-type operations.

(8) and (9). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 147, L. 1963; amd. Sec. 1, Ch. 321, L. 1973.

Amendments

The 1973 amendment deleted former subdivision (7)(b); and redesignated former clauses (7)(a)(i) and (7)(a)(ii) as (7)(a) and (7)(b).

79-413. Creation and abolition of new accounts.

Cross-References

Controller's office abolished and functions transferred, sec. 82A-202 (2).

79-414. Maintenance of fund and account records—appropriations and transfers—accounting procedures. (1) and (2) * * * [Same as parent volume.]

(3) When the expenditure of an appropriation is necessary, and the cash balance in the account from which the appropriation was made is insufficient, the state controller may authorize a transfer, as a temporary loan bearing no interest, of unrestricted moneys from other accounts, provided that there is reasonable evidence that the income provided for the remainder of the fiscal year will be sufficient to restore the amount so transferred, and provided the loan is recorded in the state accounting records. No account shall be so impaired that all proper demands thereon cannot be met.

(4) When moneys have been appropriated from several sources for the operation of a state agency, the state controller may establish an account to receive, hold and disburse moneys appropriated for the operation of the agency and regulate the transfer of moneys to the account in accordance with the laws governing the expenditure of state moneys.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971.

Amendments

The 1971 amendment added subsections (3) and (4).

79-415. Appropriation and disbursement of moneys from the treasury. (1) Moneys deposited in the general fund, the earmarked revenue fund, and the federal and private revenue fund, with the exception of trust income and refunds authorized in subsection (3) of this act, shall be paid out of the treasury only on appropriation made by law. Moneys deposited in the revolving fund for the purpose of financing administrative operations shall be paid out of the treasury only by appropriation made by law. Moneys deposited in the revolving fund for the purpose of purchasing consumable or depreciable assets may be expended within the limitations of an annual financial plan approved by the department of administration.

(2) * * * [Same as parent volume.]

(3) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it, and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the state controller.

(4) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, providing that the loan is recorded in the state accounting records. Such loan shall bear no interest and no fund shall be so impaired that all proper demands thereon cannot be met.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973.

Amendments

The 1971 amendment inserted "and refunds authorized in subsection (3) of this act" in subsection (1); and added subsections (3) and (4).

The 1973 amendment deleted "the revolving fund" following "earmarked revenue fund" in subsection (1); and added the second sentence to subsection (1).

CHAPTER 6—PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS—CONTINGENT REVOLVING ACCOUNTS

Section
79-601. Support of state institutions.
79-602. Contingent revolving accounts—when established.
79-603. State agencies may retain certain moneys, when.

79-601. (194) **Support of state institutions.** For the support and endowment of each state institution there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system, and for the refunding of such obligations, or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

History: En. Sec. 3, Ch. 112, L. 1921; re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3, Ch. 14, L. 1941; amd. Sec. 11, Ch. 147, L. 1963; amd. Sec. 3, Ch. 298, L. 1973.

Amendments

The 1973 amendment combined the former preliminary paragraph and former paragraph 1 into one paragraph; inserted "in connection with such endowments" near the beginning of the second sentence; substituted "obligations incurred for the purchase, construction, equipment, or improvement of the facilities at units of the Montana university system, and for the refunding of such obligations" for "bonds issued in connection with the construction of buildings" near the end of the second sentence; and made minor changes in style and phraseology.

79-602. (195) **Contingent revolving accounts—when established.** The state controller may authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, such as payment of minor invoices, invoices for which discount period is too short to take advantage of the discount if payment is made by warrant, freight and express

charges, travel advances, postage, publications requiring remittance to accompany the order, and the establishment of cash change funds, all under specific regulations to be established by the state controller. But each and every state institution granted a contingent revolving account shall report to the state controller monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state controller may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921; re-en. Sec. 195, R. C. M. 1921; amd. Sec. 9, Ch. 80, L. 1961; amd. Sec. 1, Ch. 148, L. 1969.

Amendments

The 1969 amendment inserted "such as payment of minor invoices * * * cash change funds, all" after "demands requiring immediate cash payment" in the first sentence.

Cross-References

Controller's office abolished and functions transferred, sec. 82A-202 (2).

79-603. (196) **State agencies may retain certain moneys, when.** The state controller may in his discretion permit any state agency to retain in its possession, under such conditions as the state controller may prescribe, moneys that would otherwise be deposited in the agency fund as defined in the treasury fund structure act. The state controller may cancel such permission and require the deposit of any or all such moneys with the state treasurer at his pleasure, provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such moneys and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971.

Amendments

The 1971 amendment substituted "agency" for "institution" in the first sentence; substituted "moneys that * * * structure act" for "incomes from * * * or otherwise" at the end of the first sentence; substituted "moneys" for "funds" in two places in the second sentence; and made a minor change in punctuation.

CHAPTER 8—MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER—SUSPENSION

79-801. (183) Repealed.

Repeal

Section 79-801 (Sec. 444, Pol. C. 1895), relating to posting of warrants for redemption, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-804. (185) Repealed.

Repeal

Section 79-804 (Sec. 1, Ch. 5, L. 1909), relating to a stenographer for the state treasurer, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-806 to 79-808. (187.1 to 187.3) Repealed.

Repeal

Sections 79-806 to 79-808 (Secs. 1 to 3, Ch. 6, L. 1925), relating to accounting and the state treasurer's reports, were repealed by Sec. 3, Ch. 152, Laws 1971.

79-810. (189) Repealed.

Repeal

Section 79-810 (Sec. 3, Ch. 141, L. 1907), relating to reports of depositories, was repealed by Sec. 3, Ch. 152, Laws 1971.

79-813. (197.1) Repealed.

Repeal

Section 79-813 (Sec. 1, Ch. 58, L. 1931; Sec. 13, Ch. 147, L. 1963), relating to sale of property from escheated estates, was repealed by Sec. 1, Ch. 117, Laws 1973.

CHAPTER 10—STATE BUDGET ACT

Section
79-1012. Governor chief budget officer.
79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information.

79-1012. Governor chief budget officer. The governor shall be the chief budget officer of the state. The state controller shall be ex officio budget director and it shall be his duty to carry out provisions of this chapter.

History: En. Sec. 1, Ch. 158, L. 1959; amd. Sec. 1, Ch. 101, L. 1969.

Amendments

The 1969 amendment substituted the second sentence for the following provision: "and shall appoint a director of the budget, who shall hold office at the pleasure of the governor, and whose duty it shall be to carry out the provisions of this chapter."

Cross-References

Director's position abolished and functions transferred, sec. 82A-202(2).

79-1013. Blanks for preparation of budget estimates—distribution—form—submission of information. In the preparation of a state budget the director of the budget shall not later than the first day of July in the year preceding the convening of the legislative assembly, distribute to all state offices and institutions, including the judicial department, the proper blanks necessary for the preparation of budget estimates. These blanks shall be in such form as shall be prescribed by the director of the budget to procure such information as the director of the budget shall, in his discretion, feel is necessary for the preparation of a budget including budget estimates, estimates of revenues, actual revenues received, expenditures made and other information classified and grouped as requested by the director of the budget and covering such period or periods of time as specified by the director of the budget.

(a) Except as provided in this paragraph, it shall be the duty of each department and agency to submit information requested by the director of the budget on or before the first day of August in the year preceding the convening of the legislative assembly. Each unit of the university of Montana, each state custodial institution and the Montana state highway commission shall submit such information on or before the first day of September of such year.

(b). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969.

Amendments

The 1969 amendment inserted "and the Montana state highway commission" after "each state custodial institution" in subdivision (a).

CHAPTER 11—PURCHASE OF STATE GENERAL FUND WARRANTS WITH LAND BOARD FUNDS—NOTICE TO BOARD OF BOND SALES

79-1101. (1912) **Prior right to purchase general fund warrants, etc.**

Cross-References

Board of land commissioners' functions transferred, sec. 82A-205(1)(g).

CHAPTER 12—MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

Section
79-1212. Payments from Montana trust and legacy fund.
79-1215. Records of treasurer—publicity to contributors given by legislature.

79-1201 to 79-1203. (5668.19 to 5668.21) **Repealed.**

Repeal

Sections 79-1201 to 79-1203 (Secs. 1 to 3, Ch. 70, L. 1953; Secs. 7 to 9, Ch. 176, L. 1953; Sec. 1, Ch. 118, L. 1957; Sec. 1, Ch. 173, L. 1959; Sec. 1, Ch. 67, L. 1963; Secs. 16, 17, Ch. 147, L. 1963; Sec. 1, Ch. 256, L. 1963; Sec. 1, Ch. 78, L. 1967; Sec. 1, Ch. 185, L. 1967; Sec. 1, Ch. 188, L. 1971; Sec. 1, Ch. 205, L. 1971; Sec. 1, Ch. 269, L. 1971; Sec. 34, Ch. 100, L. 1973), relating to the unified investment plan for investment funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

79-1206 to 79-1209. (5668.24 to 5668.27) **Repealed.**

Repeal

Sections 79-1206 to 79-1209 (Secs. 6 to 9, Ch. 70, L. 1929; Secs. 10 to 12, Ch. 176, L. 1953; Secs. 18, 19, Ch. 147, L. 1963; Sec. 35, Ch. 100, L. 1973), relating to investment of the trust and legacy fund, the supreme court, power of the board of land commissioners to transfer securities, and the treasurer's account of the invested funds, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1211. (5668.29) **Repealed.**

Repeal

Section 79-1211 (Sec. 11, Ch. 70, L. 1929; Sec. 13, Ch. 176, L. 1953; Sec. 20, Ch. 147, L. 1963; Sec. 36, Ch. 100, L. 1973), relating to transfer of interest earned from trust and legacy fund pro rata to each subfund, was repealed by Sec. 9, Ch. 298, Laws 1973.

79-1212. (5668.30) **Payments from Montana trust and legacy fund.** The principal, and any part thereof, of each and every subfund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular subfund arises.

History: En. Sec. 12, Ch. 70, L. 1929; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "constitutional and" before "statutory provisions applicable thereto."

79-1213, 79-1214. (5668.31, 5668.32) **Repealed.**

Repeal

Sections 79-1213, 79-1214 (Secs. 13, 14, Ch. 70, L. 1929; Secs. 14, 15, Ch. 176, L. 1953; Secs. 22, 23, Ch. 147, L. 1963), relating to payments from funds administered under the unified investment plan, were repealed by Sec. 9, Ch. 298, Laws 1973.

79-1215. (5668.33) **Records of treasurer—publicity to contributors given by legislature.** The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state

board of investments under acts and parts of acts providing therefor or accepting the same on the part of the state of Montana. This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislature shall from time to time make provisions for suitable publicity concerning these benefactors of their fellow men.

History: En. Sec. 15, Ch. 70, L. 1929; amd. Sec. 38, Ch. 100, L. 1973; amd. Sec. 10, Ch. 298, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 298. Neither amendatory act mentioned the other. They appear to conflict in the language used at the end of the first sentence. Since the only change made by Ch. 100 was in the conflicting language, and since Ch. 298 was later in time of approval, the compiler has used the language of Ch. 298 above.

Amendments

Chapter 100, Laws of 1973, substituted "the trust and legacy fund statutes" at the end of the first sentence for "article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect."

Chapter 298, Laws of 1973 substituted "state board of investments" for "state board of land commissioners" in the first sentence; substituted "acts and parts of acts providing therefor or accepting the same on the part of the state of Montana" at the end of the first sentence for "article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect"; and substituted "legislature" for "legislative assembly" in the final sentence.

79-1216. (5668.34) Repealed.

Repeal

Section 79-1216 (Sec. 16, Ch. 70, L. 1929; Sec. 16, Ch. 176, L. 1953), relating to reports by the state treasurer, was repealed by Sec. 9, Ch. 298, Laws 1973.

CHAPTER 16—INDIAN WELFARE FUNDS—ADMINISTRATION

79-1602. (5668.15) Repealed.

Repeal

Section 79-1602 (Sec. 2, Ch. 65, L. 1927), relating to expenditure of federal funds on behalf of Indians, was repealed by Sec. 1, Ch. 198, Laws 1973.

CHAPTER 20—BOND VALIDATING ACT

Section
79-2001. **Short title of act.**
79-2002. **Definitions.**
79-2003. **Validation of bonds heretofore issued.**
79-2004. **Act does not apply to pending actions.**

79-2001. Short title of act. This act may be cited as "The 1973 Bond Validating Act."

History: En. Sec. 1, Ch. 145, L. 1973.

Compiler's Notes

Chapter 145 of Laws 1973 was substituted for Ch. 208, Laws 1971 and assigned section numbers identical with those of the 1971 law. Previous bond validating acts enacted since 1935 were: Ch. 6, Laws 1937; Ch. 164, Laws 1939; Ch. 45, Laws 1941; Ch. 117, Laws 1943; Ch. 196, Laws 1945; Ch. 81, Laws 1947; Ch. 2, Laws 1953; Ch. 5, Laws 1955; Ch. 4, Laws 1957; Ch. 16, Laws 1959; Ch. 19, Laws 1961; Ch. 100, Laws 1963; Ch. 75, Laws 1965; Ch. 96, Laws 1967; Ch. 43, Laws 1969.

Title of Act

An act validating, ratifying, approving and confirming bonds and other instruments or obligations, heretofore issued by public bodies of this state, and all proceedings heretofore taken by such public

bodies, to authorize and issue such bonds, instruments and other obligations, however described; providing that this act may be cited as "The 1973 Bond Validating Act"; containing a repealing clause; and providing an effective date.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meanings:

(1) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and shall also include the board of public education, the board of regents, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(2) The term "bonds" includes bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 145, L. 1973; amd. Sec. 12, Ch. 344, L. 1973.

Amendments

The 1973 amendment substituted "board of public education" and "board of regents" for "state board of education" in subdivision (1).

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued by any public body of this state, and all proceedings heretofore taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery, and bonds of such public bodies, whether heretofore issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such political body.

History: En. Sec. 3, Ch. 145, L. 1973.

79-2004. Act does not apply to pending actions. This act shall not apply to or affect any action or appeal instituted on or before January 1, 1973, in which the validity of any such proceedings or of any such bonds is at issue.

History: En. Sec. 4, Ch. 145, L. 1973.

Repealing Clause

Section 5 of Ch. 145, Laws 1973 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 6 of Ch. 145, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 5, 1973.

CHAPTER 22—LONG-RANGE BUILDING PROGRAM BONDS

Section
79-2201. Definitions and establishment of funds.
79-2202. Long-range building program bonds.
79-2203. Sinking fund account.
79-2204. Waiver of security provisions.
79-2205. Authorization of bonds.

79-2201. Definitions and establishment of funds. (1). * * * [Same as parent volume.]

(2) Long-range building program bonds mean and include all series of bonds issued to finance any portion of the long-range building program or to refund outstanding bonds, as authorized in this chapter.

(3). * * * [Same as parent volume.]

(4) Clearance fund account means a separate long-range building program subfund which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the long-range building program, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislative assembly.

(5) Board, department and treasurer mean the state board of examiners, department of administration and state treasurer, respectively.

History: En. Sec. 1, Ch. 276, L. 1965; amd. Sec. 1, Ch. 510, L. 1973.

Amendments

The 1973 amendment deleted "as authorized in section 79-2202" after "bonds issued" in subsection (2); added "or to refund outstanding bonds, as authorized in this chapter" at the end of subsection (2); and substituted references to the department of administration for references to the state controller in subsections (4) and (5).

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

79-2202. Long-range building program bonds. (1) When authorized by the vote of two-thirds (2/3) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law, and within the limits of such authorization and the further limitations in this section, the board may issue and sell bonds of the state of Montana in such manner as it shall deem necessary and proper to provide funds to finance the long-range building program. Bonds may be issued hereunder to provide funds for the payment or redemption of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds issued pursuant to Initiative No. 54, and the amendment thereof, chapter 270, Laws of 1963, and long-range building program bonds issued under this section. The full faith and credit and taxing powers of the state of Montana shall be pledged for the payment of all bonds issued pursuant to this chapter after January 1, 1973, with all interest thereon and premiums payable upon the redemption thereof.

(2) Each series of such bonds shall be issued by the board upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery

of definitive bonds, bearing interest at such rate or rates, maturing at such times not exceeding thirty (30) years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agency of the state of Montana, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds, the amount, maturities and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year, on all such bonds then outstanding and on the series so to be issued, will not exceed fifty per centum (50%) of the average annual amount collected during the three (3) then next preceding fiscal years, from the special taxes pledged by law to the sinking fund account at the time of such issuance; except that this provision shall not constitute a covenant of the state for the security of the bonds issued pursuant to this chapter after January 1, 1973, and the state reserves the right to amend this subsection (3) in any manner after all bonds issued prior to that date, and the interest thereon, have been fully paid or the state's liability thereon has been otherwise fully discharged.

(4). * * * [Same as parent volume.]

(5) All proceeds of bonds issued hereunder shall be deposited in the clearance fund account, except that any premiums and accrued interest received shall be deposited in the sinking fund account. For the purposes set forth in subdivision (1) hereof, the state treasurer acting by and with the approval of the state board of examiners may set aside such funds as may be necessary to assure the redemption, or payment at maturity, of all of the outstanding War Veterans' Compensation Bonds and World War I Veterans' Compensation Bonds and as may be necessary or required to fulfill the obligations of the state of Montana by virtue thereof. With such funds the state treasurer with the approval of the state board of examiners is hereby authorized to call said bonds for redemption in accordance with the provisions thereof, at any redemption date, to pay said bonds on the maturity dates thereof, to deposit securities in escrow for the purpose of assuring such payments at future dates, and to take such other steps as may be necessary to fulfill all of the obligations of the state of Montana existing under the provisions of said bonds and the laws and resolutions authorizing the same.

(6) The state board of examiners is hereby authorized to employ a fiscal agent to assist in the performance of its duties hereunder.

History: En. Sec. 2, Ch. 276, L. 1965; amd. Sec. 2, Ch. 318, L. 1967; amd. Sec. 1, Ch. 146, L. 1969; amd. Sec. 1, Ch. 222, L. 1971; amd. Sec. 2, Ch. 510, L. 1973.

Amendments

The 1967 amendment added what is now the second sentence of subsection (1); added the second and third sentences of subsection (5); and added subsection (6).

The 1969 amendment increased the maximum interest rate specified in subsection (2) from five per cent to five and one-half per cent per annum.

The 1971 amendment deleted from subsection (2) the clause limiting interest rates to five and one-half per cent per annum; and made a minor change in phraseology.

The 1973 amendment substituted "by the vote of two-thirds (⅔) of the members of each house of the legislature, or of a majority of the electors voting thereon if so provided by law" near the beginning of

subsection (1) for "by the legislative assembly"; substituted the final sentence of subsection (1) for a second sentence providing that the bonds should never become a debt of the state; substituted a reference to the department of administration in subsection (2) for a reference to the controller; added the final part of subsection (3), beginning "except that this provision shall not constitute a covenant"; and made minor changes in phraseology and punctuation.

79-2203. Sinking fund account. (1) From and after the pledge and appropriation of any special tax to the sinking fund account, as provided and contemplated in this section, such tax shall continue in force and shall be available and shall be pledged and appropriated for the payment of long-range building program bonds, and all moneys received from the collection thereof shall be deposited by the treasurer to the credit of the sinking fund account. No special taxes pledged to the sinking fund account on January 1, 1973, shall be discontinued or diverted to other funds until all bonds issued pursuant to this chapter prior to that date and the interest thereon have been fully paid or the state's liability thereon has been fully discharged, except to the extent, if any, that the right so to do has been reserved in the resolutions authorizing the issuance of such bonds. Subject to the foregoing provisions of this subsection (1), the state reserves the right to modify from time to time the nature and amount of special taxes to be deposited to the credit of the sinking fund account.

(2). * * * [Same as parent volume.]

(3) Money at any time received in the sinking fund account in excess of the principal, interest and reserve requirements stated in subsection (2) shall be transferred by the treasurer to the general fund. If the balance at any time on hand in the sinking fund account is not sufficient for compliance with subsection (2), the treasurer shall credit to said account an amount sufficient to restore said balance from the next collections of the special taxes appropriated to said account, and from any other collections of taxes appropriated to the general fund, not exceeding the aggregate amount theretofore transferred from the sinking fund account to the general fund.

(4) The state reserves the power, by enactment of the legislative assembly or the people, to levy, impose and assess and to pledge and appropriate to the sinking fund account any tax specially designated therein, or any specified amount or percentage of the collections of such special tax. The state also reserves the power to appropriate any funds designated by enactment of the legislative assembly or the people for the redemption and prepayment of any long-range building program bonds, or to authorize the issuance and sale of bonds for the purpose of refunding any such outstanding bonds or interest thereon, upon such terms and conditions as may be provided in said enactments and consistent with covenants and agreements made for the security of the outstanding bonds. Refunding bonds issued in advance of the maturity of the bonds refunded shall be issued only subject to the conditions stated in subsection (3) of section 79-2202, substituting for this purpose the principal and interest requirements of the refunding bonds for those of the bonds refunded. Nothing herein shall prevent the board from issuing and selling refunding bonds, payable from the sinking fund account, to provide funds for payment of principal or interest due on long-range building program

bonds, when and if and to the extent that the sinking fund account is insufficient for this purpose.

(5) The state pledges and appropriates, and directs to be credited as received to the sinking fund account, eleven per centum (11%) of all money received from the collection of the income tax and the corporation license tax referred to in section 84-1901, and such additional amount of said taxes, if any, as may at any time be needed to comply with the principal and interest and reserve requirements stated in subsection (2) of this section; provided that no more than eleven per centum (11%) of such tax collections shall be deemed to be pledged for the purpose of subsection (3) of section 79-2202. The pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of said taxes.

(6) The state pledges and appropriates and directs to be credited to the sinking fund account fifteen per centum (15%) of all money received from the collection of the nine cents (9¢) excise tax on cigarettes which is levied, imposed and assessed by section 84-5606, subdivision (2). The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of each of the excise taxes on cigarettes which are levied, imposed and assessed by section 84-5606, subdivisions (3) and (4), as amended, after the payment and redemption in full of the outstanding bonds for which said taxes have heretofore been pledged and appropriated, or after the necessary funds have been set aside for such payment and redemption as provided in this chapter. The state also pledges and appropriates and directs to be credited as received to the sinking fund account all money received from the collection of the taxes on other tobacco products which are or may hereafter be levied, imposed and assessed by law for that purpose including the tax levied, imposed and assessed by section 84-6802, R.C.M 1947. Nothing herein shall impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the War Veterans' Compensation Bonds, the World War I Veterans' Compensation Bonds or the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation herein made shall be and remain at all times a first and prior charge upon all money received from the collection of all taxes referred to in this subdivision (6).

History: En. Sec. 3, Ch. 276, L. 1965; amd. Sec. 3, Ch. 318, L. 1967; amd. Sec. 2, Ch. 222, L. 1971; amd. Sec. 3, Ch. 510, L. 1973.

Amendments

The 1967 amendment, in subsection (5), increased appropriations to the sinking fund from 5 per centum to 11 per centum; in subsection (6), deleted "After approval through initiative or referendum by a majority of the electors voting at an election prior to January 1, 1967," at the beginning of the subsection; deleted "upon such approval also" before "pledges"; substituted "said taxes have" for "any such tax has" before "heretofore"; added "or after the necessary funds * * * in this act" at the end of the first sentence, now the second sentence; and added the last three sentences.

The 1971 amendment inserted a new first sentence in subsection (6); deleted "and other tobacco products" following "cigarettes" in the second sentence of subsection (6); added at the end of the third sentence of subsection (6) the clause referring to the tax imposed by section 84-6802; and made minor changes in phraseology.

The 1973 amendment deleted "irrevocably" before "pledged and appropriated"

in the first sentence of subsection (1); deleted "so long as any such bonds or the interest thereon remains unpaid" from the end of the first sentence of subsection (1); added the second and third sentences to subsection (1); deleted "and not including ad valorem taxes on property" from the end of subsection (3); deleted "except an ad valorem tax on property" after "any tax specially designated therein" in the first sentence of subsection (4); deleted "provided that this power shall not be construed to constitute a pledge of the general credit of the state of Montana" from the end of the first sentence of subsection (4); and made minor changes in phraseology and style.

DECISIONS UNDER FORMER LAW

Approval by Voters

Because portions of the proceeds of the income tax, corporation license tax and tobacco tax are pledged for the security of bonds issued under this chapter, the issuance of new bonds would create a liability within the meaning of section 2, article XIII of the 1889 constitution, and such bonds may not be issued without approval by a vote of the people. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868, distinguishing Cottingham v. State Board of Examiners, 134 M 1, 328 P 2d 907.

A holding that bonds issued under this chapter must be approved by the people will not be given retroactive effect; bonds issued in good faith before November 23, 1971, but without approval by a vote of the electors pursuant to section 2 of article XIII of the 1889 constitution, are valid. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868.

79-2204. Waiver of security provisions. If so stated in any series of bonds issued hereunder, the purchasers and holders thereof may by their purchase and retention of the same waive in whole or in part the security otherwise made available for such bonds by any provision of this chapter.

History: En. Sec. 4, Ch. 276, L. 1965; amd. Sec. 4, Ch. 510, L. 1973.

Amendments

The 1973 amendment substituted "retention" for "redemption"; and made a minor change in style.

79-2205. Authorization of bonds. The board is authorized to issue and sell long-range building program bonds in an amount not exceeding two million five hundred thousand dollars ($2,500,000), over and above the amount of the long-range building program bonds outstanding January 1, 1973, upon the conditions and in the manner stated in this chapter. The board is also authorized to issue and sell long-range building program bonds in such amount as may be required to provide funds for the payment or redemption of outstanding bonds as contemplated in section 79-2202, subdivisions (1) and (5) and section 72-2203, subdivision (4).

History: En. Sec. 5, Ch. 276, L. 1965; amd. Sec. 4, Ch. 318, L. 1967; amd. Sec. 2, Ch. 146, L. 1969; amd. Sec. 3, Ch. 222, L. 1971; amd. Sec. 5, Ch. 510, L. 1973.

Amendments

The 1967 amendment inserted "over and above the amount of the long-range building program bonds outstanding January 1, 1967," before "upon the conditions"; and added the last sentence.

The 1969 amendment substituted "eighteen million dollars ($18,000,000)" for "thirteen million five hundred thousand dollars ($13,500,000)" and substituted "previously authorized" for "outstanding January 1, 1967" before "upon the conditions" in the first sentence.

The 1971 amendment substituted "five million, five hundred thousand dollars ($5,500,000) over and above the amount of the long-range building program bonds outstanding January 1, 1971" in the first sentence for "eighteen million dollars ($18,000,000), over and above the amount of the long-range building program bonds previously authorized."

The 1973 amendment changed the authorization in the first sentence from $5,500,000 above the amount outstanding on January 1, 1971, to $2,500,000 above the amount outstanding on January 1, 1973; and added to the end of the section the reference to subdivision (4), section 72-2203.

Effective Date

Section 3 of Ch. 146, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

DECISIONS UNDER FORMER LAW

Approval by Voters

Issuance of new bonds under this section created a liability within the meaning of section 2, article XIII of the former constitution, and must be approved by a vote of the people before the bonds are issued. State ex rel. Ward v. Anderson, — M —, 491 P 2d 868.

CHAPTER 23—LEGISLATIVE AUDIT ACT

Section

79-2301. Title and purpose of act.
79-2302. Definitions.
79-2303. Legislative audit committee—appointment and term of members—officers.
79-2304. Meetings.
79-2305. Appointment and qualifications of legislative auditor.
79-2306. Appointment of employees.
79-2307. Term and removal of legislative auditor.
79-2308. Duties of legislative auditor.
79-2309. Audit standards and objectives.
79-2310. Recommendations of legislative auditor.
79-2311. Legislative auditor to assist legislative assembly during sessions.
79-2312. Information from state agencies.

79-2301. Title and purpose of act. This act may be cited as "The Legislative Audit Act." Because the legislative assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the legislative assembly should also be responsible for the audit of fiscal accounts and records so that it may be assured that its directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the legislative assembly with factual information vital to the discharge of its legislative duties.

History: En. Sec. 1, Ch. 249, L. 1967.

Title of Act

"The Legislative Audit Act" creating a legislative audit committee and the office of legislative auditor and providing for the audit of state agencies by the legislative auditor; amending sections 82-1002, 82-1005, 82-1007, 82-1009, 82-110, 71-206, 4-347, 4-230, and 5-910, R. C. M. 1947; repealing sections 82-1014, 82-1015, 82-1016, 84-4403, 84-4404, and 84-4405, R. C. M. 1947, and providing an effective date.

79-2302. Definitions. In this act

(1) "State agency" means all offices, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source.

(2) "Committee" means the legislative audit committee.

History: En. Sec. 2, Ch. 249, L. 1967.

79-2303. Legislative audit committee—appointment and term of members—officers. The legislative audit committee consists of four (4) members of the Senate and four (4) members of the House of Representatives appointed before the sixtieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislative assembly is not in session shall be filled by the selection of a member of the legislative assembly by the remaining members of the committee. No more than two (2) of the appointees of each house shall be members of the same political party. Membership on the committee shall terminate with the termination of each member's term of office, or on December 31 of the year following the year in which the appointment was made, whichever event first occurs. The committee shall elect one of its members as chairman and such other officers as it deems necessary.

History: En. Sec. 3, Ch. 249, L. 1967.

79-2304. Meetings. The committee shall meet once each quarter to advise and consult with the legislative auditor. Committee members shall be reimbursed from the appropriation to the office of the legislative auditor for their actual and necessary expenses incurred as a result of such interim meetings.

History: En. Sec. 4, Ch. 249, L. 1967.

79-2305. Appointment and qualifications of legislative auditor. The committee shall appoint the legislative auditor and set his salary. The legislative auditor shall hold a degree from an accredited college or university with a major in accounting or an allied field and shall have at least two (2) years experience in the field of governmental accounting and auditing.

History: En. Sec. 5, Ch. 249, L. 1967.

79-2306. Appointment of employees. The legislative auditor may appoint whatever employees are necessary to carry out the provisions of this act, within the limitations of legislative appropriations.

History: En. Sec. 6, Ch. 249, L. 1967.

79-2307. Term and removal of legislative auditor. The legislative auditor is solely responsible to the legislative assembly. He shall hold office for a term of two (2) years beginning with July 1 of each odd-numbered year. The committee may remove him for misfeasance, malfeasance or nonfeasance in office at any time after notice and hearing.

History: En. Sec. 7, Ch. 249, L. 1967.

79-2308. Duties of legislative auditor. The legislative auditor shall

(1) Audit the financial affairs and transactions of every state agency at least once each biennium.

(2) Make a full, complete and written report of each audit. A copy of each report shall be furnished to the state controller, to the state

agency which is audited, to each member of the committee, and to the legislative council.

(3) Report immediately in writing to the attorney general any apparent violation of penal statutes disclosed by the audit of a state agency, and furnish the attorney general all information in his possession relative to the violation.

(4) Report immediately in writing to the governor any instances of misfeasance, malfeasance or nonfeasance by a state officer or employee disclosed by the audit of a state agency.

(5) Report immediately to the surety upon the bond of any official or employee when an audit discloses a shortage in the accounts of the official or employee. The failure to notify the surety does not release the surety from any obligation under the bond.

(6) Report to the legislative assembly during the first week of each regular session. Each biennial report shall contain, among other things, copies of, or summaries of audit reports on state agencies and any recommendations relating to such reports.

History: En. Sec. 8, Ch. 249, L. 1967.

79-2309. Audit standards and objectives. The objectives of audits of state agencies conducted by the legislative auditor are to determine whether

(1) The agency is carrying out only those activities or programs authorized by the legislative assembly and is conducting them efficiently and effectively.

(2) Expenditures are made only in furtherance of authorized activities and in accordance with the requirements of applicable laws and regulations.

(3) The agency collects and accounts properly for all revenues and receipts arising from its activities.

(4) The assets of the agency or in its custody are adequately safeguarded and controlled and utilized in an efficient manner.

(5) Reports and financial statements by the agency to the governor, the legislative assembly, and central control agencies disclose fully the nature and scope of the activities conducted, and provide a proper basis for evaluating the agency's operations.

History: En. Sec. 9, Ch. 249, L. 1967.

79-2310. Recommendations of legislative auditor. The reports of the legislative auditor may include comments, recommendations and suggestions, but he shall have no power to enforce them nor shall he otherwise influence or direct executive or legislative action.

History: En. Sec. 10, Ch. 249, L. 1967.

79-2311. Legislative auditor to assist legislative assembly during sessions. During sessions of the legislative assembly, the legislative auditor and his staff, when requested, shall assist the legislative assembly, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

History: En. Sec. 11, Ch. 249, L. 1967.

79-2312. Information from state agencies. All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts and records. The legislative auditor may examine at any time the books, accounts and records, confidential or otherwise, of a state agency; however, this shall not be construed as authorizing the publication of information which the law prohibits publishing. The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any larceny, or embezzlement, actual or suspected involving state moneys or property under his control or for which he is responsible.

History: En. Sec. 12, Ch. 249, L. 1967; amd. Sec. 1, Ch. 270, L. 1971.

Amendments

The 1971 amendment added the third sentence.

Repealing Clause

Section 2 of Ch. 270, Laws 1971 read "Section 79-2313, R. C. M., 1947, is hereby repealed."

79-2313. Repealed.

Repeal

Section 79-2313 (Sec. 13, Ch. 249, L. 1967; Sec. 1, Ch. 4, L. 1969), relating to audit charges against earmarked money, was repealed by Sec. 2, Ch. 270, Laws 1971.

CHAPTER 24—REIMBURSEMENT OF GENERAL FUNDS FOR COSTS OF CENTRAL SERVICES

Section

79-2401. State board of review.
79-2402. Members of board.
79-2403. Per diem expenses for member not a state officer.
79-2404. State controller as chairman—substitutes.
79-2405. Records—dissent.
79-2406. Seal—authentication of records.
79-2407. Quorum—vacancy.
79-2408. Secretary—cost of operation.
79-2409. "Administrative cost" defined—state agencies.
79-2410. Determination of administrative cost—charge against agency's fund.
79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction.
79-2412. Certification—statement—administrative cost due—deferment—transfer of funds.
79-2413. Funds unavailable—unable to pay—written request for deferment—requirements.
79-2414. Certification—advance payment—deferment—funds unavailable—transfer.
79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded.

79-2401. State board of review. As used in this act, "board" means the state board of review.

History: En. Sec. 1, Ch. 11, L. 1969.

Title of Act

An act to provide for reimbursement to the state general fund for the costs of central services financed from the general fund that are provided to agencies which operate with nongeneral fund moneys and to provide a board of review to determine that the amount of these charges is fair and equitable.

Cross-References

Board abolished and functions transferred, sec. 82A-202(3).

79-2402. Members of board. There is in the executive branch of state government a state board of review. The board consists of the state controller, the state auditor, both acting ex officio, and a third member who

shall be appointed by and serve at the pleasure of the governor. The third member may be a state officer who shall act ex officio.

History: En. Sec. 2, Ch. 11, L. 1969.

79-2403. Per diem expenses for member not a state officer. If the third member is not a state officer acting ex officio, he shall receive twenty-five dollars ($25) for every day of actual attendance at meetings of the board, together with his necessary traveling expenses in attending such meetings.

History: En. Sec. 3, Ch. 11, L. 1969.

79-2404. State controller as chairman—substitutes. The state controller is chairman of the board. A member of the board may appoint a representative to act for him in carrying out the provisions of this act.

History: En. Sec. 4, Ch. 11, L. 1969.

79-2405. Records—dissent. The board shall keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon the record.

History: En. Sec. 5, Ch. 11, L. 1969.

79-2406. Seal—authentication of records. The board shall have a seal, bearing the following inscription: "State Board of Review." The seal shall be fixed to all writs and authentications of copies of records and to other instruments as the board directs.

History: En. Sec. 6, Ch. 11, L. 1969.

79-2407. Quorum—vacancy. A majority of the board constitutes a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the board. The act of a majority of the board when in session as a board is the act of the board. A vacancy in the board does not impair the right of the remaining members to exercise all the powers of the board.

History: En. Sec. 7, Ch. 11, L. 1969.

79-2408. Secretary—cost of operation. The state controller shall provide the board a secretary and all other assistance necessary for the board to fulfill its duties. All costs of operating the board shall be paid from moneys appropriated to the state controller.

History: En. Sec. 8, Ch. 11, L. 1969.

79-2409. "Administrative cost" defined—state agencies. As used in this act, "administrative costs" means the amounts expended by those state agencies which costs are attributable to the operations of all state agencies and a proration of any cost to, or expense of, the state for services of facilities provided for those state agencies which costs are attributable to the operations of all state agencies, for supervision or administration of the state government, or for services to the various state agencies.

History: En. Sec. 9, Ch. 11, L. 1969.

79-2410. Determination of administrative cost—charge against agency's fund. The state board of review shall determine, and may at any time redetermine, which funds shall be charged a share of administrative costs as to the function supported by any such fund and the amount which shall be charged against any fund as its fair share of administrative costs. These costs shall be a charge against any fund designated by the board.

History: En. Sec. 10, Ch. 11, L. 1969.

79-2411. Factors in determining share of administrative cost—tax proceeds—highway purposes—constitutional restriction. In determining or redetermining the fair share, the board may consider such factors of cost distribution and cost estimation as it deems necessary. However, that as to the proceeds of those taxes, the use of which is restricted by the Montana constitution, the board shall assess only those administrative costs ascertained as being necessarily incurred in connection with highway purposes as set forth in the constitution.

History: En. Sec. 11, Ch. 11, L. 1969; amd. Sec. 39, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "section 1b, of article XXI, of" before "the Montana constitution" in the second sentence; and substituted "the constitution" for "that article" at the end of the section.

79-2412. Certification—statement—administrative cost due—deferment—transfer of funds. The board shall certify annually to the state controller the amount determined to be the fair share of administrative costs due and payable from each state agency and shall certify forthwith to the controller any amount redetermined to be the fair share of administrative costs due and payable from any state agency. The controller shall forthwith transmit to each state agency, from which administrative costs have been determined or redetermined to be due, a statement in writing setting forth the amount of the administrative costs due from the state agency, and stating that, unless a written request to defer payment is filed by the state agency with the state controller within thirty (30) days after the mailing of the statement by the controller to the state agency, the controller will direct the state treasurer to transfer the amount of the administrative costs from the special fund or funds chargeable therewith to the state general fund. The controller shall specify on the statement the special fund appropriations to be charged at the time transfers are made covering the administrative costs.

History: En. Sec. 12, Ch. 11, L. 1969.

79-2413. Funds unavailable—unable to pay—written request for deferment—requirements. If, upon receipt of the statement provided in section 12 [79-2412] of this act, the state agency does not have funds available by law for the payment of the administrative costs, or if any transfer might, if effected, result in loss to the state or to any special fund affected, of any federal funds, or would be in violation of the constitution or any

law of the United States, or if it has any other reason why the payment of the costs should not be made at the time specified on the statement, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the controller, in duplicate, a written request to defer payment of the administrative costs. The request shall set forth the reasons why the payment should be deferred. Upon receipt of a request filed because of lack of availability of funds or because of any reason other than lack of availability of funds, the controller shall forthwith transmit one (1) copy of the request to the board; and shall defer action to effect the transfer of funds until the transfer has been approved by the board.

History: En. Sec. 13, Ch. 11, L. 1969.

79-2414. Certification—advance payment—deferment—funds unavailable—transfer. The board may certify at any time during the year to the state controller the amount as it determines, based upon experience of the preceding year, to be a reasonable advance for administrative costs to be made from the appropriation of each state agency supported from a fund, designated in accordance with section 10 [79-2410] of this act. The controller shall forthwith transmit to each state agency a statement in writing setting forth the amount of the advance, and stating that unless a written request to defer payment because of lack of availability of funds is filed by the state agency with the controller within thirty (30) days after the mailing of the statement by the controller to the state agency, the controller will transfer the amount of the advance from the special fund, or funds concerned, to the state general fund. The controller shall specify on the statement that special fund appropriation to be charged.

History: En. Sec. 14, Ch. 11, L. 1969.

79-2415. Deferred advance payment—written request—advance applied against share of administrative cost—excess amount refunded. If, upon receipt of the statement provided in section 14 [79-2414] of this act, the state agency does not have funds available by law for the payment of the advance, the state agency shall, prior to the expiration of the thirty (30) day period referred to in the statement, file with the state controller, in duplicate, a written request to defer payment of the advance. Upon receipt of a request, the controller shall forthwith transmit one (1) copy of the request to the board and shall defer action to effect the transfer of funds covering the advance referred to in the request until the transfer has been approved by the board. Any advance shall be applied against the state agency's fair share of administrative costs determined or redetermined as provided in section 12 [79-2412] and section 13 [79-2413] of this act. If the amount advanced exceeds the state agency's fair share of administrative costs, the controller shall transfer from the state general fund to the special fund appropriation the excess amount advanced.

History: En. Sec. 15, Ch. 11, L. 1969.

CHAPTER 25—EMERGENCY AND DISASTER FUND

Section
79-2501. Governor may authorize expenditure in case of emergency or disaster.
79-2502. Maximum biennial expenditure.
79-2503. Implementation and administration.

79-2501. Governor may authorize expenditure in case of emergency or disaster. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws.

History: En. Sec. 1, Ch. 409, L. 1971.

Title of Act

An act to provide an emergency and disaster fund for the governor to be implemented by the department of administration, authorizing the governor to expend not to exceed seven hundred fifty thousand dollars ($750,000) per biennium from the general fund, and an immediate effective date.

79-2502. Maximum biennial expenditure. Whenever an emergency or disaster is declared by the governor, he is authorized to expend from the general fund not to exceed seven hundred fifty thousand dollars ($750,000), in any one (1) biennium.

History: En. Sec. 2, Ch. 409, L. 1971.

79-2503. Implementation and administration. The governor shall be charged with the implementation of the program, and the administration and development of rules and regulations for implementation of this act will be promulgated by the department of administration.

History: En. Sec. 3, Ch. 409, L. 1971.

Effective Date

Section 4 of Ch. 409, Laws 1971 read "In order to preserve the public peace, health, welfare and safety, this act shall become effective upon its passage and approval." Approved March 18, 1971.

CHAPTER 26—INTEREST ON BONDS AND SPECIAL ASSESSMENTS OF POLITICAL SUBDIVISIONS

Section
79-2601. Definitions.
79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions.
79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations.

79-2601. Definitions. The following terms as used in this act have the following meanings: (1) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, special assessments, income or property of a political subdivision, including all instruments or obligations payable from a special fund.

(2) "Political subdivision" includes a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other governmental subdivision of the state of Montana, but shall not include the state of Montana, the state board of examiners, the state water conservation board, the state highway commission or any other board, agency, or commission of the state of Montana.

(3) "Governing body" means the board, council, commission or other body charged with the general control of the issuance of bonds of a political subdivision.

History: En. Sec. 1, Ch. 234, L. 1971.

Title of Act

An act relating to the maximum rate of interest on bonds issued and special assessments levied and other evidence of indebtedness by political subdivisions and providing an effective date, and amending sections 11-2304, 11-2404, 16-2011, 75-7107, 75-7115, 75-7116, 75-7119, 75-7121, 11-2315, 16-2032, 11-982, 11-1307, 11-2218, 11-2214.2, 11-2226, 11-2227, 11-2231, 11-2249, 11-2277, 11-3717, 11-3910, 16-1620, 16-2002, 16-2046, 16-2604, 16-4517, 32-3121, 32-3123, 32-3502, 32-3805, 81-1003, 89-1701, 89-1705, 89-1801, 89-2348, 89-2501, 35-115, 47-124, 89-2502 and 89-3426, R. C. M. 1947.

79-2602. Rate of interest on bonds to be determined by governing bodies—limitations and exceptions. Bonds of a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed seven per cent (7%) except revenue bonds issued under the terms of sections 11-2401 through 11-2414, sections 11-2217 through 11-2221, and sections 11-4101 through 11-4110, R. C. M. 1947, which rate shall not exceed nine per cent (9%).

History: En. Sec. 2, Ch. 234, L. 1971.

79-2603. Rate of interest on special assessments to be determined by governing bodies—limitations. All special assessments levied by a political subdivision shall bear interest at such rate or rates as its governing body shall determine, except that no such rate shall exceed the greater of seven per cent (7%) per annum or, in the event that the special assessments are appropriated for the payment of principal and interest on bonds issued by the political subdivision, the rate of interest on said bonds.

History: En. Sec. 3, Ch. 234, L. 1971.

TITLE 80—STATE INSTITUTIONS

Chapter
1. Montana state school for the deaf and blind, 80-105, 80-107.
14. State department of institutions, 80-1403 to 80-1405, 80-1410 to 80-1418.
16. Payments for the care of residents of institutions, 80-1601, 80-1603.
17. Galen state hospital, 80-1701 to 80-1704.
19. State prison, 80-1903, 80-1905, 80-1908 to 80-1912.
22. Vocational and industrial schools, 80-2202 to 80-2206, 80-2209 to 80-2212.
23. Boulder river school and hospital, 80-2303 to 80-2312.
24. Division of mental hygiene—state hospital and mental health centers, 80-2401, 80-2401.1, 80-2402 to 80-2412.
26. Division of mental retardation, 80-2601 to 80-2610.

CHAPTER 1—MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

Section
80-105. Eligibility of children for admittance.
80-107. Duration of attendance at school.

80-102. Montana state school for deaf, etc., independent institution, etc.

Compiler's Notes

Sections 75-302 to 75-309, referred to in this section, were repealed by Sec. 63, Ch. 2, Laws 1971.

80-105. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, who are not more than eighteen (18) years of age, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "who have reached the age of five (5) and" after "blind children"; and substituted "who are not more than eighteen (18) years of age" for "between such ages" after "nonresident children."

80-107. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school until reaching the age of twenty-one (21) years unless the board of education and superintendent determine that attendance at the school will not benefit the child; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

History: En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967.

Amendments

The 1967 amendment deleted "for a period of ten (10) years, or" after "such school" and substituted "unless the board of education and superintendent determine that attendance at the school will not benefit the child" after "twenty-one (21) years" for "if such age be reached before the expiration of such ten (10) year period. Any child who has attended the school for a period of ten (10) years, but has not yet reached the age of twenty-one (21) years, with the consent and approval of the superintendent of the school, may petition the state board of education to remain in such school for an additional period of two (2) years, or until arriving at the age of twenty-one (21) years if such child will arrive at such

age before the expiration of such additional two (2) year period. The board shall consider the petition upon the scholastic record and the record as to obedience and morality of such child while in such school and if it finds it proper to do so may grant the same."

80-110. Data relating to deaf and blind children, etc.

Compiler's Notes

Section 75-1903, referred to in this section, was repealed by Sec. 496, Ch. 5, Laws 1971.

CHAPTER 14—STATE DEPARTMENT OF INSTITUTIONS

Section
80-1403. Institutions in department.
80-1404. Director of department—appointment, powers and duties.
80-1405. Powers and duties of board.
80-1410. Establishment of juvenile correctional facilities.
80-1411. Control and management of juvenile correctional centers—rules—special programs.
80-1412. Youth forest camp—work program.
80-1413. Participation by governing boards in research programs.
80-1414. Aftercare agreement to be signed by child before release from juvenile facility to custody of aftercare division.
80-1415. Control over minor so released vested in department of institutions.
80-1416. Detention of child who violates aftercare agreement—delivery on request to aftercare division.
80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty.
80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty.

80-1401. Purpose of department.

Cross-References

Department abolished and functions transferred, sec. 82A-802.

80-1403. Institutions in department. The following institutions are in the state department of institutions:

(1) Galen state hospital
(2) Montana veterans' home
(3) State prison
(4) Montana children's center
(5) Mountain View school
(6) Pine Hills school
(7) Boulder river school and hospital
(8) Warm Springs state hospital
(9) Montana center for the aged
(10) Swan river youth forest camp
(11) Eastmont training center
(12) Such other institutions or departments established or to be established in the future having the function or purpose of providing care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

No state institution may be moved, discontinued or abandoned without prior consent of the legislative assembly.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969.

Amendments

The 1967 amendment changed the names of the institutions listed in clauses (1),

(5), (6), (7) and (8); and added clauses (10) and (11).

The 1969 amendment inserted new clause (11) and redesignated former clause (11) as clause (12).

Effective Date

Section 2 of Ch. 280, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

80-1404. Director of department—appointment, powers and duties. The board shall appoint the director, who is the chief executive and administrative officer of the department. The director shall be a person qualified by experience, training and professional competence in institutional rehabilitation and treatment management. The function of the director, in addition to other duties assigned to him by law, is to execute the policies established by the board. The director shall appoint employees for the central office of the department.

History: En. Sec. 4, Ch. 199, L. 1965; amd. Sec. 2, Ch. 320, L. 1967.

Amendments

The 1967 amendment deleted a sentence at the end of the section, which read "The board shall appoint and after hearing held discharge the warden or superintendent of institutions."

80-1405. Powers and duties of board. The board shall:

(1). * * * [Same as parent volume.]

(2) Report as provided in section 2 [82-4002] of this act.

(3) to (7). * * * [Same as parent volume.]

(8) To choose, appoint and discharge the warden or superintendent of each of the institutions or facilities in the department and, unless the legislative assembly has specified the salary of the warden or superintendent of the institution or facility in the appropriation to the department of institutions, fix their compensation after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969.

Amendments

The 1967 amendment added subparagraph (8).

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual reports to governor and biennial reports to legislature.

Cross-References

Board functions transferred, sec. 82A-803.

80-1406. Warden and superintendents of institutions, etc.

Cross-References

Advisory councils to state prison and veterans' home abolished, sec. 82A-807(4).

Council of superintendents abolished, sec. 82A- 807(2).

Discretionary Authority of Warden of State Prison

Actions of warden of state prison in denying inmate access to money deposited in his spending account would not be interfered with in light of wide discretionary powers granted warden and in absence of clear showing that warden abused discretion. Petition of Spurlock, 151 M 380, 443 P 2d 5.

80-1407. Board of institutions—appointment and qualifications.

Cross-References

Board continued as advisory and quasi-judicial board, sec. 82A-806.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

80-1410. Establishment of juvenile correctional facilities. The state department of institutions within the annual or biannual budgetary appropriation therefor may establish, maintain and operate facilities as may be needed properly to diagnose, care for, train, educate, and rehabilitate children in need of these services, and ten (10) years of age or older and under twenty-one (21), including but not limited to, the Mountain View school, the Pine Hills school and the youth forest camp.

History: En. Sec. 8, Ch. 320, L. 1967.

Title of Act

An act relating to the powers and duties of the board of institutions and to certain institutions under its management and control; providing the board's power to fix salaries of superintendents of institutions with the approval of the board of examiners if the salaries of superintendents or wardens are not specified by the legislative assembly in the appropriation to the department of institutions; changing the name of certain institutions; generally revising and amending the laws relating to juvenile correctional institutions; providing for the control and management of juvenile correctional facilities including juvenile correctional facilities hereafter authorized by the legislature; providing for transferring of prisoners sent to the state prison who are under the age of twenty-one (21) to juvenile correctional facilities; amending sections 80-1403, 80-1404, 80-1405, 80-1601, 80-1701, 80-1702, 80-1703, 80-2202, 80-2203, 80-2204, 80-2205, 80-2206, 80-2209, 80-2210, 80-2211, 80-2212, 80-2301, 80-2302, 80-2303, 80-2304, 80-2305, 80-2306, 80-2307, 80-2308, 80-2309, 80-2401, 80-2402, 80-2404, repealing 80-2201, 80-2208, R. C. M. 1947.

80-1411. Control and management of juvenile correctional centers—rules—special programs. All of the facilities provided for in section 8 [80-1410] of this act or which may hereafter be established by the department pursuant to the authority granted by section 8 [80-1410] of this act shall exercise their functions under the supervision, direction, control and general management of the department. Except where otherwise provided by law, the department by rule and regulations shall establish standards of care, policies of admission, transfers, discharge and aftercare supervision and from time to time it shall order such changes in the policies, conduct or management of the facilities as seems desirable in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: En. Sec. 9, Ch. 320, L. 1967.

80-1412. Youth forest camp—work program. In the case of a youth forest camp, a work program shall be provided by the Montana state forester, and shall be carried out with co-operation between the state forester and the camp superintendent.

History: En. Sec. 10, Ch. 320, L. 1967.

80-1413. Participation by governing boards in research programs. The duly constituted and governing board of any penal, corrective, or custodial institution of the state of Montana is hereby enabled and authorized to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana or by any foundation or agency thereof, in the fields of science, health, education and natural resources. Such programs may include the

voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967.

Title of Act

An act authorizing voluntary participation in programs of research and development in the fields of science, health, education and natural resources by the governing boards of state penal, corrective or custodial institutions, and by the inmates thereof for use in welfare and rehabilitation work within said institutions.

80-1414. Aftercare agreement to be signed by child before release from juvenile facility to custody of aftercare division. A child released by the department of institutions from one of the state juvenile facilities to the supervision, custody and control of the aftercare division of the department of institutions shall, before being so released, sign an aftercare agreement containing the terms and conditions under which the child is so released.

History: En. Sec. 1, Ch. 158, L. 1969.

Title of Act

An act providing for the apprehension and detention of a child released from the custody of one of the state juvenile facilities to the supervision, custody and control of the aftercare division of the department of institutions, who has violated the terms of his or her aftercare agreement.

80-1415. Control over minor so released vested in department of institutions. The department of institutions has control over a child so released until he attains the age of eighteen (18) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by such child while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973.

Amendments

The 1973 amendment reduced the specified age from twenty-one to eighteen years.

80-1416. Detention of child who violates aftercare agreement — delivery on request to aftercare division. A child who violates the terms and conditions of his or her aftercare agreement may be detained, day or night, by the department of institutions or by any law officer of the state of Montana or any county or city of the state of Montana, upon certificates in writing to such officer by the director of the aftercare division of the department of institutions or any aftercare counselor of the department of institutions to the effect that such child has violated the terms and conditions of his or her aftercare agreement. Upon detention by a law officer of the state of Montana as hereinbefore provided, such child shall on request be delivered to the custody of the aftercare division of the department of institutions who may

(1) return such child to one of the juvenile facilities of the state of Montana, or

(2) continue such child under the supervision of the aftercare division.

History: En. Sec. 3, Ch. 158, L. 1969.

Effective Date

Section 4 of Ch. 158, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

80-1417. Removal of patients from state custodial institutions without permission of staff a misdemeanor—penalty. A person other than a parent or one having legal custody of the person of the patient or inmate who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars ($500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 361, L. 1971.

Title of Act

An act to prohibit the removal of patients from state custodial institutions without permission of the staff.

80-1418. Distribution of alcoholic beverages and drugs to patients at state custodial institutions a misdemeanor—penalty. A person who knowingly sells or distributes, or attempts to sell or distribute, alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff, is guilty of a misdemeanor and upon conviction, is punishable by imprisonment in a county jail not exceeding six (6) months, or by a fine not exceeding five hundred dollars ($500), or both.

Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 362, L. 1971.

Title of Act

An act to prohibit the sale or distribution of alcoholic beverages and drugs to patients at state custodial institutions.

CHAPTER 16—PAYMENTS FOR THE CARE OF RESIDENTS OF INSTITUTIONS

Section
80-1601. Institutions subject to per diem charge.
80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts.

80-1601. Institutions subject to per diem charge. The state department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or group homes under the jurisdiction of the aftercare division of the department of institutions:

(1) Montana children's center
(2) Warm Springs state hospital
(3) Boulder river school and hospital
(4) Galen state hospital
(5) Montana veterans' home

(6) Montana center for the aged

(7) Eastmont training center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971.

Amendments

The 1967 amendment, in subparagraph (2), substituted "Warm Springs state hospital" for "State Hospital"; in subparagraph (3), substituted "Boulder river school and hospital" for "State Training School and Hospital"; and, in subparagraph (4), substituted "Galen state hospital" for "State Pulmonary Disease Hospital."

The 1969 amendment added subparagraph (7).

The 1971 amendment inserted "and for the care of those persons in foster homes or group homes under the jurisdiction of the aftercare division of the department of institutions" at the end of the preliminary paragraph.

Effective Dates

Section 2 of Ch. 276, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 191, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

80-1603. Monthly assessment of charges—annual computation of rate—investigation—claim of state—review—deposit of receipts. (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the director of institutions.

(2) For the purpose of such investigations, every agency and department of the state is required to render all reasonable assistance to the department of institutions in obtaining all information necessary for the proper implementation of the purposes of such an investigation. The director and any representative of the department duly authorized by the director, shall have the power to administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records and documents deemed material appurtenant in connection with the duty of securing payments for support as provided by this act. Any person failing to obey such subpoena, upon petition of the director or representative of the department, to any judge of the district court of the state of Montana, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. Any person who fails to obey the subpoena when ordered to do so by the judge may be punished as for contempt of court on application of the district court by the director or his representative.

(3) The state of Montana shall have a claim against the estate of any patient and against the estate of any responsible person, for any amount due and owing to the state of Montana at the date of death or such resident or such person. Such claim against the estate of any responsible person shall not have priority against such estate for the amount necessary to rear and educate surviving children of the responsible person.

(4) The attorney general shall collect any claim which the state may have hereunder against such estate. No such claim shall be enforced against

any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(5) If a resident or responsible person disagrees with the determination of the department as to the ability of such resident or responsible person to pay all or any part of the per diem charge, an appeal may be filed within thirty (30) days of such determination with the state board of institutions. If such resident thereafter disagrees with the determination of the appeal by the state board of institutions, an appeal may be filed and taken to any court of record in Montana having jurisdiction of the resident or responsible person liable for such payment.

(6) The department may, at any time, review and change any determination for per diem payments. In any case, however, no resident of an institution shall be released by reason of the nonpayment of the per diem, if in the judgment of the superintendent of the institution at which he is a resident, such release is medically inadvisable.

(7) All per diem payments received by the department shall be deposited in the state treasury to the credit of the general fund.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969.

Amendments

The 1969 amendment rewrote subsection (1), for previous text of which see parent volume; inserted subsections (2) to (4); redesignated and rewrote former subsection (2) as subsection (5); redesignated former subsection (3) as subsection (6) and deleted "and may, if necessary, request a further investigation by a county department of public welfare" at the end of the first sentence; and redesignated former subsection (4) as subsection (7).

CHAPTER 17—GALEN STATE HOSPITAL

Section
80-1701. Location and primary function of hospital—secondary function.
80-1702. Qualifications of superintendent.
80-1703. Transfer of patient to mental institution—notice to relatives.
80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from.

80-1701. Location and primary function of hospital—secondary function. (1) The institution located at Galen is the Galen state hospital and, as its primary function, provides:

(a) Treatment of tuberculosis and silicosis (commonly called miner's consumption).

(2) If there are space and funds available, the hospital shall also treat the following:

(a) Emphysema, bronchiectasis, carcinoma of the lung and other diseases of the lung pertaining to pulmonary disorders.

(b) Geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "State Pulmonary Disease Hospital" in subsection (1).

80-1702. Qualifications of superintendent. The superintendent of Galen state hospital shall be a physician legally qualified to practice medicine in

Montana with at least (4) years in the practice of his profession, including at least one (1) year's experience in a general hospital.

History: En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital."

80-1703. Transfer of patient to mental institution—notice to relatives. A mentally retarded or mentally ill person residing at Galen state hospital may be transferred to the Warm Springs state hospital, the Montana center for the aged, or the Boulder river school and hospital with the approval of the department of institutions if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Galen state hospital" for "state pulmonary disease hospital"; substituted "Warm Springs state hospital" for "state hospital"; substituted "Boulder river school and hospital" for "state training school and hospital"; and made a minor change in punctuation.

80-1704. Juvenile reception and evaluation center—committal—duties—transportation to and from. The reception and evaluation center for children at the Galen state hospital as established by law shall be subject to the rules and regulations adopted and promulgated by the state department of institutions and shall accept from the juvenile courts the temporary custody of children then being held on a charge, under which the child could be adjudged a delinquent. For the period during which children are in the custody of the reception and evaluation center for children, it shall provide for them a residential program of care and study. The reception and evaluation center for children may not in any event detain or hold a child in custody for a period of time greater than forty-five (45) days. To assist the juvenile courts in making a decision regarding the child's disposition the reception and evaluation center for children will forward recommendations to the court to include, but not limited to, a psychiatric social summary; psychological evaluation, medical report; diagnostic school report; and a psychiatric report prepared by a consulting psychiatrist, for those for whom this kind of evaluation is considered necessary. Transportation to and from the reception and evaluation center shall be provided by the county of such child's residence.

History: En. Sec. 20, Ch. 320, L. 1967.

Cross-References

Juvenile court committal of delinquents, sec. 10-611.

Repealing Clause

Section 21 of Ch. 320, Laws 1967 read "Sections 80-2201 and 80-2208, R. C. M. 1947, are hereby repealed."

CHAPTER 19—STATE PRISON

Section
80-1903. Working hours of prison employees.
80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law.
80-1908. Commitment of inmates to state hospital.
80-1909. Establishment of intensive rehabilitation center authorized.
80-1910. Standards of admission.
80-1911. Management and control of center.
80-1912. Expense of trial for escape.

80-1903. Working hours of prison employees. A period of eight (8) hours in each period of twenty-four (24) consecutive hours constitutes a day's work for all employees of the state prison. The staff of correctional personnel shall not work more than forty (40) hours or five (5) days a week except in cases of riots, escapes or other emergencies endangering health, life, or property.

History: En. Sec. 26, Ch. 199, L. 1965; amd. Sec. 1, Ch. 232, L. 1969.

Amendments

The 1969 amendment substituted "forty (40)" for "forty-eight" before "hours" and "five (5)" for "six" before "days" in the second sentence.

80-1905. Good time allowance—forfeiture—probationers and parolees—application of prior law. (1) The state department of institutions shall adopt rules and regulations providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules and regulations made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) to (c). * * * [Same as parent volume.]

(d) thirteen (13) days per month for those inmates enrolled in school inside the walls who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole.

(e) ten (10) days for each pint of blood donated by an inmate.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967.

Amendments

The 1967 amendment added subdivisions (d) and (e) in subsection (1).

Discretion of Parole Board

Where petitioner violated his parole, it was completely within discretion of parole board to withdraw his "good time" as provided in this section. Petition of Spurlock, 153 M 475, 458 P 2d 80.

DECISIONS UNDER FORMER LAW

Forfeiture of Good Time Allowance

A prisoner who, by virtue of former section 80-740.1, was earning good time under former section 80-739, the prior law, was subject to the provisions of former section 80-741, the forfeiture statute, which existed under the old law. Petition of Brandt, 147 M 175, 410 P 2d 708.

Contention by petitioner for writ of habeas corpus that board of pardons did not have authority to revoke earned good time after violation of parole by petitioner under this section was without merit since petitioner was sentenced prior to 1955 and section 80-741, in effect at that time, allowed such revocation of earned good time. Petition of McIlhargey, 154 M 510, 463 P 2d 476.

80-1908. Commitment of inmates to state hospital. The procedures for committing an inmate of the state prison to the state hospital are the same as for any other person. Provided, however, that nothing in this act shall be deemed to prevent the temporary transfer of an inmate of the state prison to the Warm Springs state hospital for treatment or evaluation. Such transfers may only be authorized by the department of institutions upon recommendation of the warden of the state prison and the superintendent of the Warm Springs state hospital and shall be for a period not to exceed sixty days and shall not exceed a total of one hundred twenty days in any twelve-month period.

History: En. Sec. 31, Ch. 199, L. 1965; amd. Sec. 1, Ch. 294, L. 1969.

Amendments

The 1969 amendment added the last two sentences.

Effective Date

Section 2 of Ch. 294, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

80-1909. Establishment of intensive rehabilitation center authorized. Within the budgetary limits provided them by law, the board of institutions is authorized to establish on property owned by the state of Montana on which prison facilities are or may be located a prison facility designed to make possible the segregation of certain types of prisoners from other prisoners.

History: En. Sec. 1, Ch. 221, L. 1969.

Title of Act

An act providing for the establishment of an intensive rehabilitation center at the Montana state prison; providing standards of admission to such center; providing for the management and control of such center.

80-1910. Standards of admission. The facility shall be designated and known as the "intensive rehabilitation center" and shall be the place of custody for those male prisoners who in consideration of their age, type of crime for which committed, physical condition, behavior, attitude and prospects of reformation, are those most likely to benefit from such place of custody.

History: En. Sec. 2, Ch. 221, L. 1969.

80-1911. Management and control of center. The warden of the Montana state prison, subject to the supervision and control of the department of institutions shall operate and manage such intensive rehabilitation center, and shall make such rules and regulations for the operation, management, and admission to such center as may from time to time be necessary and desirable.

History: En. Sec. 3, Ch. 221, L. 1969.

80-1912. (10872) **Expense of trial for escape.** Whenever a trial takes place of any person under any of the provisions of section 94-7-306, and whenever a prisoner in the state prison shall be tried for any crime committed therein, the county clerk of the county where such trial is had shall make out a statement of all the costs incurred by the county for the trial of such case, and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the board of state prison commissioners for their approval; and after

such approval, said board must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was had.

History: En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R. C. M. 1921; Sec. 94-4209, R. C. M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973. Cal. Pen. C. Sec. 111.

Compiler's Notes

The previous text of this section may be found under sec. 94-4209 in bound Volume Eight.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to section 94-7-306 for a reference to sections 94-4203 and 94-4204 near the beginning of the section.

CHAPTER 20—STATE BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION

80-2001. Bureau under prison warden—appointment of supervisor.

Cross-References

Bureau abolished and functions transferred, sec. 82A-1202(1).

CHAPTER 21—MONTANA CHILDREN'S CENTER

80-2101. Location and function of center.

Cross-References

High school tuition payments, sec. 75-6319.

CHAPTER 22—VOCATIONAL AND INDUSTRIAL SCHOOLS

Section
80-2202. Superintendents to manage facilities.
80-2203. Curricula at facilities.
80-2204. Maximum age of commitment.
80-2205. Medical examination before commitment—records required to accompany child committed.
80-2206. Commitment expenses—arrangement for transportation.
80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court.
80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility.
80-2211. Child leaving juvenile facility without permission—apprehension and return.
80-2212. Aiding resident in leaving school—penalty.

80-2201. Repealed.

Repeal

This section (Sec. 45, Ch. 199, L. 1965), relating to the location and functions of vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2202. Superintendents to manage facilities. Each facility provided for herein shall be under the immediate management and control of a superintendent.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Each facility provided for herein" for "The state vocational school for girls and the state industrial school"; and made a minor change in phraseology.

80-2203. Curricula at facilities. The academic and vocational curriculum in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state, and shall conform to the standards set by the state board of education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "The academic and vocational curriculum in facilities containing academic and vocational training" for "The curricula of the state vocational school for girls and the state industrial school."

80-2204. Maximum age of commitment. No child shall be committed by any juvenile court to the Mountain View school, Pine Hills school or other juvenile facility who has attained the age of eighteen (18) years, except, however, that any person under twenty-one (21) years who prior to attaining the age of eighteen (18) years came under the jurisdiction of the juvenile court by reason of delinquent conduct and whose adjudication of delinquency, including the finding that commitment to some institution was necessary is not made until after the child reaches the age of eighteen (18) years shall be committed to the department of institutions who shall then have the obligation to test and evaluate the person to determine the proper place of detention for the person who shall thereupon be confined at that institution until the person shall have attained the age of twenty-one (21) years unless sooner discharged by the department of institutions.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment rewrote this section which formerly read, "No child shall be committed to the Mountain View school, Pine Hills school or the department of institutions who has attained the age of eighteen (18)."

Repealing Clause

Section 16 of Ch. 262, Laws 1969 read "Sections 10-604, 10-605, 10-609, 10-618, 10-619, 10-620, 10-632, 75-3001, and 75-3002, R. C. M. 1947, are repealed."

80-2205. Medical examination before commitment—records required to accompany child committed. Before a child is committed to the Mountain View school or the Pine Hills school or the department of institutions he shall be examined by a licensed physician. A child committed to one of the schools or the department of institutions shall be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

80-2206. Commitment expenses—arrangement for transportation. The expenses of committing a child to the Mountain View school or the Pine Hills school or to the department of institutions and transporting such child to the Mountain View school or the Pine Hills school or the place designated by the department for it to receive custody and the expense

of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department of institutions has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2208. Repealed.

Repeal

This section (Sec. 52, Ch. 199, L. 1965), relating to the placement or discharge of residents of vocational and industrial schools, was repealed by Sec. 21, Ch. 320, Laws 1967 and Sec. 34, Ch. 320, Laws 1967.

80-2209. Transfer of child to any other facility or institution—notice to parents or guardian and committing court. (1) The department of institutions upon recommendation of the superintendent of a facility may transfer a child resident in one of its juvenile facilities to any other facility or institution under the jurisdiction and control of the department.

(2) In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder river school and hospital and unless medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department of institutions shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

80-2210. Commutation of sentence to state prison—commitment of child to department of institutions—revocation of commutation—transfer of child to a juvenile facility. (1) Upon the application of a person under the age of twenty-one (21) years who has been sentenced to the state prison, or upon the application of his parents or guardians, the governor may, after consulting with the department of institutions and with the approval of the board of pardons, commute the sentence by committing such person to the department of institutions during his minority or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of institutions indicates that he is not a proper person to reside at one of the department's juvenile facilities, the governor after consulting with the department of institutions with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the department juvenile facilities or while a refugee from one of the department juvenile facilities, shall not be considered as a part of his original sentence.

Upon recommendation of the warden and with the approval of the department of institutions a person under the age of twenty-one (21) years, who has been sentenced to the state prison, may be transferred to any juvenile facility under the jurisdiction and control of the department. Provided, further, however, that upon recommendation of the warden and approval of a person sentenced to the state prison, or application of a person sentenced to the state prison and approval of the warden, and with the approval of the department of institutions such person sentenced to the state prison who is twenty-five (25) years old or younger may be transferred to the Swan River youth forest camp. Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred.

If such person's behavior after transfer to such juvenile facility indicated he might be released on parole or his sentence commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department, may make an appropriate recommendation to the state board of pardons and the governor who may, in their discretion, parole such person or commute his sentence.

If such person's behavior after transfer to a juvenile facility indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent, and with the approval of the department, such person shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971.

Amendments

The 1967 amendment, in subsection (1), substituted "twenty-one (21)" for "eighteen (18)"; substituted "department of institutions" for "state vocational school for girls or state industrial school" before "during his minority"; in subsection (2), substituted "committed to the department of institutions" for "sent to one of such schools" before "indicates"; substituted "one of the department's juvenile facilities" for "one of the schools" after "reside at"; substituted "department juvenile facilities or while a refugee from one of the department juvenile facilities" for "schools, or while a refugee from one of the schools" before "shall not be considered"; and added the second, third and fourth paragraphs in subsection (2).

The 1971 amendment substituted "person" for "child" throughout the section; and inserted in the second paragraph of subsection (2) the proviso for the transfer of prisoners of the age of twenty-five or younger to the Swan River youth forest camp.

Effective Date

Section 2 of Ch. 367, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

80-2211. Child leaving juvenile facility without permission—apprehension and return. A child who has left a juvenile facility of the department without permission may be apprehended and returned by any citizen. The term "juvenile facility of the department" means any facility under the supervision and control of the Montana state department of institutions, whose primary function is the care, training, custody and control of children and specifically includes the Pine Hills school for boys, the Mountain View school for girls, the Montana children's center, Boulder river school and hospital, the Swan river youth forest camp and Eastmont training center.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. 1, Ch. 313, L. 1973.

Amendments

The 1967 amendment substituted "a juvenile facility of the department" for

"the state vocational school for girls or state industrial school."

The 1973 amendment added the second sentence.

80-2212. Aiding resident in leaving school—penalty. A person who permits or assists a resident of any juvenile facility to leave a facility without permission, or who furnished or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission, or who harbors or conceals a resident who has left without permission, shall on conviction be punished by imprisonment for a term of not less than six (6) months or more than two (2) years, or by a fine not exceeding one thousand dollars ($1,000), or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "any juvenile facility to leave a facility" for "the state vocational school for girls or the state industrial school to leave the school" after "a resident of."

CHAPTER 23—BOULDER RIVER SCHOOL AND HOSPITAL

Section

80-2303. Residence required for admittance to school.
80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary.
80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application.
80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs.
80-2307. Temporary admissions to school.
80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court.
80-2309. Discharge from school.
80-2310. Mental retardation center at Glendive—services provided.
80-2311. Capacity of mental retardation center.
80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital.

80-2301, 80-2302. Repealed.

Repeal

Sections 80-2301 and 80-2302 (Secs. 58, 59, Ch. 199, L. 1965; Secs. 22, 23, Ch. 320, L. 1967), relating to management of the Boulder River school and hospital, were repealed by Sec. 7, Ch. 111, Laws 1971.

80-2303. Residence required for admittance to school. To be eligible for admittance to the Boulder river school and hospital, a mentally retarded person or his parent or guardian shall have been a resident of the state for at least one (1) year.

History: En. Sec. 60, Ch. 199, L. 1965; amd. Sec. 24, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2304. Application of parent or guardian for admission of mentally retarded person—supporting affidavits—social summary. If an application for admission of a mentally retarded person to the Boulder river school and hospital is made by the guardian or parent it shall be filed with the department of institutions, in a form prescribed by the department and available at the county department of public welfare office. The application shall be supported by the affidavit of two (2) physicians or one (1)

psychologist acceptable to the department of institutions and one (1) physician certifying that the person whose admission is sought is mentally retarded. The county department of public welfare, where the retarded person resides, shall prepare a social summary on the retarded person for the use of the Boulder river school and hospital.

History: En. Sec. 61, Ch. 199, L. 1965; amd. Sec. 25, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" wherever it appears in this section.

80-2305. Applications heard by district court—hearing—medical and psychological examination—social summary—order approving application. If the application for admission is made by someone other than the parent or legal guardian of a mentally retarded person, it shall be filed with the clerk of the district court. The application shall be in a form prescribed by the state department of institutions. The judge shall set the time and place for hearing the application, and the clerk shall notify the parents or guardians, and other interested persons. The court shall name two (2) physicians or one (1) psychologist acceptable to the department of institutions, and one (1) physician, to examine the person whose admission is sought. The county department of public welfare shall prepare a social summary of the person for the use of the court. If the court concludes from the examination and other information obtained at the hearing that the person whose admission is sought, is a proper person for admission to the Boulder river school and hospital, the court shall issue an order approving the application.

History: En. Sec. 62, Ch. 199, L. 1965; amd. Sec. 26, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the sixth sentence.

80-2306. Admission to school to await accommodations—records to accompany person admitted—transportation costs. A person may not be taken to the Boulder river school and hospital until the department of institutions has ascertained whether or not there is room at the school to accommodate the person. If there is not room, the application shall be filed with the department, which shall grant admission when room becomes available. When there is room the person shall be sent to the school with a copy of the court order, if any, the application, and the social summary prepared by the county department of public welfare. The costs of transportation to the school shall be paid by the county where the person resides.

History: En. Sec. 63, Ch. 199, L. 1965; amd. Sec. 27, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" in the first sentence.

80-2307. Temporary admissions to school. In order to utilize facilities more efficiently during the temporary or seasonal decreases in population, and in order to extend the benefits of training and treatment programs

offered by the Boulder river school and hospital to mentally retarded persons whose extended commitment is not sought, the department of institutions may admit a mentally retarded person to the school for a period not exceeding sixty (60) days on the application of the person's parent or guardian.

History: En. Sec. 64, Ch. 199, L. 1965; amd. Sec. 28, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital."

80-2308. Transfer of patient to hospital—notice to parents or guardian and committing court. With the approval of the department of public institutions, a patient of the Boulder river school and hospital may be transferred to the Warm Springs state hospital or the Galen state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the person, and to the district court, if any, which committed the person. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer.

History: En. Sec. 65, Ch. 199, L. 1965; amd. Sec. 29, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" after "patient of the"; and substituted "Warm Springs state hospital or the Galen state hospital" for "state hospital of (or) the state pulmonary disease hospital" after "transferred to the" in the first sentence.

80-2309. Discharge from school. (1) With the approval of the department of institutions, the superintendent may discharge a person admitted to the Boulder river school and hospital.

(2). * * * [Same as parent volume.]

History: En. Sec. 66, Ch. 199, L. 1965; amd. Sec. 30, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Boulder river school and hospital" for "state training school and hospital" at the end of subsection (1).

80-2310. Mental retardation center at Glendive—services provided. The board of institutions shall establish, construct, equip, maintain and provide services for a mental retardation center at Glendive to be called "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. Provided, however, the center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall be planned, constructed, equipped and shall provide services similar to those provided at the state training school and hospital at Boulder; provided, however, that the center shall not be a duplication of the state training school and hospital but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973.

Amendments

The 1969 amendment inserted "to be called 'Eastmont training center'" after "at Glendive" in the first sentence.

The 1973 amendment inserted the second sentence.

Cross-References

Board functions transferred to department, sec. 82A-803.

80-2311. Capacity of mental retardation center. The center to be constructed under the provisions of this act shall not exceed the requirements of two hundred (200) bed units.

History: En. Sec. 4, Ch. 255, L. 1967.

80-2312. Supervision of Glendive center—transfers to Boulder river school and hospital. The board of institutions shall plan, supervise, and provide rules and regulations for, but not limited to, the construction, equipment, maintenance, staff requirements and services to be provided at the center. The board shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical and other services on a temporary basis.

History: En. Sec. 5, Ch. 255, L. 1967; amd. Sec. 2, Ch. 275, L. 1969.

Amendments

The 1969 amendment substituted "Eastmont training center to the Boulder river school and hospital" for "Glendive center to the state training school and hospital at Boulder"; and substituted "and" for "or" before "other services on a temporary basis" in the second sentence.

Effective Date

Section 3 of Ch. 275, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

CHAPTER 24—DIVISION OF MENTAL HYGIENE—STATE HOSPITAL AND MENTAL HEALTH CENTERS

Section

80-2401. Location and function of hospital—hospital in division of mental hygiene.
80-2401.1. Definition of terms.
80-2402. Superintendent is supervisor of division—qualifications of superintendent.
80-2403. Functions of division of mental hygiene.
80-2404. Alcoholism services center.
80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines.
80-2406. Clinics and community services.
80-2407. Mental health regions.
80-2408. Continuation of services.
80-2409. Availability of services.
80-2410. Mental health centers established—staffing.
80-2411. Supervision of mental health centers.
80-2412. Interstate compact on mental health enacted—text.

80-2401. Location and function of hospital—hospital in division of mental hygiene. The institution located at Warm Springs is the "Warm Springs state hospital." The only function of the state hospital is the care and treatment of mentally ill persons and alcoholics. The Warm Springs state hospital is in the division of mental hygiene of the department of institutions.

History: En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" throughout this section.

80-2401.1. Definition of terms. As used in this act, unless the context clearly indicates otherwise:

(1) Public mental health facility is any public service or group of services operating under the guidelines of the division of mental hygiene of the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) Community comprehensive mental health center is a facility not necessarily encompassed within one building offering at least the following five (5) basic mental health services to the public:

(a) Twenty-four (24) hour inpatient care.

(b) Part-time hospitalization.

(c) Outpatient service.

(d) Emergency service.

(e) Consultation and education in mental health.

(3) Mental health clinic is an outpatient facility offering mental health care to the public.

History: En. Sec. 1, Ch. 246, L. 1967.

Title of Act

An act expanding duties and services of the division of mental hygiene of the state board of public institutions by establishing and conducting mental health clinics and community comprehensive mental health centers; creating regional mental health boards; providing for the organization thereof; defining the duties of regional mental health boards; authorizing the participation of the division of mental hygiene of the state board of public institutions in contractual or cooperative arrangements with regional mental health boards and others; providing the division of mental hygiene and the regional mental health boards the authority to receive gifts, grants, donations, and any other form of support and enabling counties participating in regional mental health programs to use tax moneys to finance the programs of prevention, diagnosis and treatment of mental illness; giving the division of mental hygiene of the state board of public institutions general supervisory power and control over all public mental health programs in the state of Montana; amending section 80-2403 of the Revised Codes of Montana, 1947, enacted as section 69, chapter 199, Laws of 1965; and repealing all other acts and parts of acts in conflict herewith.

80-2402. Superintendent is supervisor of division—qualifications of superintendent. The superintendent of the Warm Springs state hospital is the supervisor of the division of mental hygiene. The superintendent shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry.

History: En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" in the first sentence.

80-2403. Functions of division of mental hygiene. The division of mental hygiene of the department of institutions shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state.

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to the implementation of mental health care and treatment, prevention and research as can best be accomplished by community centered services. Such means shall be utilized by the division of mental hygiene as will initiate and operate these services in

co-operation with local agencies as established under provisions of sections 4 and 5 [80-2406 and 80-2407] below.

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention and care of mental illness.

(4) Collect and disseminate information relating to mental hygiene.

(5) Prepare a comprehensive plan for the development of public mental health services in the state. Such public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who shall apply for examination or who shall be admitted either as inpatients or outpatients into the state hospital or other public mental health facility under the supervision and control of the division of mental hygiene, for the purpose of diagnosing and prescribing treatment of mental illness.

(7) Receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state.

History: En. Sec. 69, Ch. 199, L. 1965; amd. Sec. 2, Ch. 246, L. 1967.

Amendments

The 1967 amendment added "including but not limited to * * * below" after "mental health program" at the end of subparagraph (2); in subparagraph (3), inserted "research" after "medical"; substituted "a comprehensive plan" for "plans" after "Prepare" at the beginning of subparagraph (5); inserted "public" before "mental" in the first sentence and added the second sentence to subparagraph (5); rewrote subparagraph (6), which formerly read, "Examine persons received into the state hospital and other persons who apply for examination, for the purpose of diagnosing and prescribing treatment of mental illness"; deleted old subparagraph (7), which read, "Establish and conduct clinics in cities and towns of the state for the diagnosis and treatment of mental illness"; redesignated old subparagraph (8) as new subparagraph (7); and in new subparagraph (7), inserted "government of the" before "United States" near the beginning of the subparagraph; inserted "persons or groups of persons, associations, firms or corporations" after "agencies"; inserted "receipts from fees, gifts, supplies, materials and contributions" after "grants of money"; substituted "health" for "hygiene" before "services"; and deleted "and use such moneys in its operation" at the end of the subparagraph.

Cross-References

Units of department of institutions abolished and functions transferred, sec. 82A-802.

80-2404. Alcoholism services center. (1) There is an alcoholism services center at the Warm Springs state hospital. The admittance and discharge procedures for alcoholics are the same as for mentally ill persons.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967.

Amendments

The 1967 amendment substituted "Warm Springs state hospital" for "state hospital" at the end of the first sentence of subsection (1).

Repealing Clause

Section 34 of Ch. 320, Laws 1967 read "Section 80-2201, R. C. M. 1947, and section 80-2208, R. C. M. 1947, are hereby repealed."

Effective Date

Section 35 of Ch. 320, Laws 1967 read "The institutional name changes specified in this act shall be effective January 1, 1968."

80-2405. Department of institutions to control public mental health programs—establishment of standards, qualifications and compensation—compliance with federal guidelines. The department of institutions, through the division of mental hygiene, shall control the public mental health programs which receive any state assistance by establishing and promulgating rules, regulations, and standards for providing mental health facilities and services. It shall set minimum standards for programs, establish appropriate qualifications and compensation scales and personnel policies for persons employed in such programs. All public mental health facilities and services shall, subject to the approval of the department of institutions, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds.

History: En. Sec. 3, Ch. 246, L. 1967.

80-2406. Clinics and community services. (1) The division of mental hygiene may establish and conduct community comprehensive mental health centers, mental health clinics and other facilities in cities, towns and areas of the state for the purpose of aiding in the prevention, diagnosis and treatment of mental illness. Such centers, clinics or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules and regulations promulgated and established by the division of mental hygiene.

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs.

History: En. Sec. 4, Ch. 246, L. 1967.

Cross-References

Units of department of institutions abolished and functions transferred, sec. 82A-802.

80-2407. Mental health regions. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the state board of health under sections 82-3314 to 82-3318, R.C.M. 1947, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the county on a regional mental health board, which board shall be established under guidelines adopted by the division of mental hygiene. All appointments to said board shall be for terms of two (2) years.

(3) The duties of any organized regional mental health board shall include:

(a) Annual review and evaluation of mental health needs and services within said region.

(b) Submission to the division of mental hygiene and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region.

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section.

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region.

(f) Keeping all records of the board and making such reports as may be required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share, not later than June 10 in each year. If the board of county commissioners shall include in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund; provided, however, if the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the division of mental hygiene, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties, which fees shall be paid by each nonparticipating county for services rendered to the residents of such nonparticipating county. Such fees may be received by the board and used to implement the budget and to provide services.

History: En. Sec. 5, Ch. 246, L. 1967.

Compiler's Notes

The Community Mental Health Centers Act, referred to in subsection (1), is compiled in the United States Code as Tit. 42, secs. 2681 to 2687.

80-2408. Continuation of services. Nothing in this act shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. Sec. 6, Ch. 246, L. 1967.

80-2409. Availability of services. The services of the division of mental hygiene of the department of institutions shall be made available

without discrimination on the basis of race, color, creed or ability to pay and shall comply with the provisions of Title VI of the Civil Rights Act of 1964.

History: En. Sec. 7, Ch. 246, L. 1967.

Compiler's Notes

Title VI of the Civil Rights Act of 1964, referred to in this section, is compiled in the United States Code as Tit. 42, secs. 2000d to 2000d-4.

Repealing Clause

Section 8 of Ch. 246, Laws 1967 repealed all acts and parts of acts in conflict therewith.

80-2410. Mental health centers established—staffing. (a) The board of institutions shall establish mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one of each of the following:

(1) Psychiatrist.
(2) Psychologist.
(3) Psychiatric nurse or social worker.

(b) Each center shall provide the following services:

(1) Short term inpatient service.
(2) Partial inpatient service.
(3) Rehabilitation.
(4) Communities education.

History: En. Sec. 1, Ch. 255, L. 1967.

Title of Act

An act requiring the board of institutions to establish mental health centers in Miles City and Glasgow for care and treatment of mentally ill persons, providing staff and service requirements to be under supervision and regulations of the board; requiring the board to establish, construct, equip, maintain and staff a mental retardation center at Glendive, providing for residential and outpatient care of mentally retarded persons as an extension of the state training school and hospital under supervision and regulations of the board, not to exceed two hundred bed units; and providing for temporary transfers to state training school and hospital at Boulder.

Cross-References

Board functions transferred to department, sec. 82A-803.

80-2411. Supervision of mental health centers. The mental health centers shall be established, organized and supervised by the board of institutions, under rules and regulations of the board authorized in section 80-145 [80-1405].

History: En. Sec. 2, Ch. 255, L. 1967.

80-2412. Interstate compact on mental health enacted—text. The interstate compact on mental health as contained herein is hereby enacted into law and entered into by this state with all other jurisdiction legally joining therein in the form substantially as follows:

The contracting states solemnly agree, that:

Article I. The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by co-operative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism

require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II. As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "Aftercare" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III. (a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnish all available medical and other pertinent records concerning the patient; given

the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV. (a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identify of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

Article V. Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved

pursuant to this compact through any and all states party to this compact, without interference.

Article VII. (a) No person shall be deemed a patient of more than one (1) institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two (2) or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII. (a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX. (a) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X. (a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general co-ordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

Article XI. The duly constituted administrative authorities of any two (2) or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or co-operative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII. This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII. (a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one (1) year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact

is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

The director of the department of institutions, hereafter called "the director," shall be the compact administrator and shall have the power to make any rules and regulations necessary for the administration of this article. The director shall co-operate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the interstate compact on mental health or of any supplementary agreement or agreements entered into by this state thereunder.

The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the interstate compact on mental health, and the general assembly shall appropriate such sums necessary therefor.

The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval the court shall hold such hearings as it deems appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

Duly authenticated copies of the article shall upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States, and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971.

Title of Act

An act relating to the interstate compact on mental health authorizing the state of Montana to enter into a compact with any of the United States, its territories and possessions, for the treatment of mentally ill and mentally deficient; providing for a "compact administrator"; and providing an effective date.

Effective Date

Section 2 of Ch. 112, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

CHAPTER 26—DIVISION OF MENTAL RETARDATION

Section
80-2601. Establishment of division of mental retardation.
80-2602. Institutions in division of mental retardation.
80-2603. Supervisor of division of mental retardation.

80-2604. Primary function of institutions in division.
80-2605. Mental retardation defined.
80-2606. Functions of division of mental retardation.
80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations.
80-2608. Administration—allocation of appropriated moneys—local services to mentally retarded.
80-2609. Factors to be considered in approving or rejecting programs.
80-2610. Rules and regulations—other powers of director incident to administration of community-centered services.

80-2601. Establishment of division of mental retardation. It is hereby established a division of mental retardation within the department of institutions.

History: En. Sec. 1, Ch. 111, L. 1971.

Title of Act

An act to establish a division of mental retardation within the department of institutions; providing that the Boulder River school and hospital is within the division of mental retardation; providing that the Eastmont training center is within the division of mental retardation; providing that the superintendent of Boulder River school and hospital is the supervisor of the division of mental retardation; prescribing the location and function of the Boulder River school and hospital; prescribing the function of the superintendent of the Boulder River school and hospital; defining mental retardation; setting forth the functions of the division of mental retardation and providing for effective date. Repealing sections 80-2301 and 80-2302, R. C. M. 1947.

Cross-References

Units of department of institutions abolished and functions transferred, sec. 82A-802.

80-2602. Institutions in division of mental retardation. The Boulder River school and hospital, located at Boulder, Montana, and the Eastmont training center, located at Glendive, Montana, are in the division of mental retardation of the department of institutions.

History: En. Sec. 2, Ch. 111, L. 1971.

80-2603. Supervisor of division of mental retardation. The superintendent of the Boulder River school and hospital is responsible for the immediate management and control of the school and in addition, is the supervisor of the division of mental retardation.

History: En. Sec. 3, Ch. 111, L. 1971.

80-2604. Primary function of institutions in division. The primary function of the Boulder river school and hospital and the Eastmont Training center is the care, treatment, training and education of mentally retarded persons. The "care, treatment, training and education of mentally retarded persons," shall be deemed to include necessary medical treatment.

History: En. Sec. 4, Ch. 111, L. 1971.

80-2605. Mental retardation defined. As used in this act "mental retardation" is a state of subnormal development of the human organism which results in the mental incapability of the person affected to adapt himself to the daily demands of a social environment.

History: En. Sec. 5, Ch. 111, L. 1971.

80-2606. Functions of division of mental retardation. The functions of the division of mental retardation of the department of institutions is as follows:

(1) Take cognizance of persons affected by mental retardation in the state of Montana.

(2) Initiate preventive mental retardation activities in the state of Montana.

(3) Make scientific and medical investigations relative to the incidence, cause, prevention, care of mental retardation.

(4) Collect and disseminate information relating to mental retardation.

(5) Prepare plans for the development of mental retardation services in the state.

(6) Establish and conduct clinics in cities and towns in the state for the diagnosis, evaluation and treatment of mental retardation.

(7) Receive from federal and other agencies, private and public, grants of money for the development of mental retardation services within the state and to use such moneys for the purposes for which they were granted.

History: En. Sec. 6, Ch. 111, L. 1971.

Repealing Clause

Section 7 of Ch. 111, Laws 1971 read "Sections 80-2301 and 80-2302, R. C. M. 1947, are hereby repealed."

Effective Date

Section 8 of Ch. 111, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

80-2607. Establishment of community-centered programs through local agencies and nonprofit corporations. The legislative assembly, in recognition of the wide and varied needs of the mentally retarded persons of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in state institutions, establishes by this act a community-centered program through interagency co-operation and co-ordination of the local agencies that offer services for mentally retarded persons, and establishes a program to purchase or to provide services through local nonprofit corporations.

History: En. Sec. 1, Ch. 165, L. 1971.

Title of Act

An act authorizing the department of institutions to purchase services in local communities for mentally-retarded persons; providing for nonprofit corporate boards to administer such programs locally; providing for the allocation of appropriated moneys; providing for approval of programs; providing for the administration by the department of institutions, and providing an effective date.

80-2608. Administration — allocation of appropriated moneys — local services to mentally retarded. (1) The department of institutions is hereby authorized to purchase or to provide services for mentally retarded persons through local nonprofit corporations. The department of institutions shall allocate to such local nonprofit corporations, for the purchase of services for mentally retarded persons, such moneys as shall be appropriated therefor. The corporations shall purchase services from public or private nonprofit sheltered workshops, day-care training centers, and

other private and public facilities, universities, colleges, public schools, and preschool nurseries, having approved facilities and offering an approved program. In case such approved facilities and services are not available in the community, the nonprofit corporations may develop, operate and provide such services directly. Payment for such services by the department shall be in an amount not to exceed seventy-five per cent (75%) of the annual cost of the approved community-centered programs. Of the amounts appropriated by the legislature for the purchase of services for mentally retarded persons under the provisions of this section, a sum not to exceed ten per cent (10%) of such amounts appropriated may be used by the office of the director of the department of institutions for the purpose of purchasing such services without regard to matching requirements. In arriving at the cost of services, the department shall set a valuation on the personal services and materials in kind which are contributed to local agencies or institutions from which such services are purchased, but such contributions shall not exceed one-half (½) of the required community share of the cost of services. Funds allocated to the nonprofit corporations by the department of institutions shall be used only for those services that are not a responsibility of another agency.

(2) For the purposes of allocating moneys under this section, the nonprofit corporations shall submit to the department a proposed budget, which budget shall include proposed expenditures, including services said corporations intend to purchase from various local agencies or institutions that offer services for mentally retarded persons.

(3) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning are hereby authorized, at their own expense, to purchase services or to furnish money, materials and services for mentally retarded persons, through such nonprofit corporations.

History: En. Sec. 2, Ch. 165, L. 1971.

80-2609. Factors to be considered in approving or rejecting programs. (1) In approving or rejecting community-centered programs for the purchase of services to mentally retarded persons, the director of the department of institutions shall consider the following factors:

(A) The adequacy and utilization of existing facilities and programs in the community, such as public and private nonprofit sheltered workshops, public school programs, preschool nurseries, and day-care centers, and universities and colleges;

(B) The adequacy of participation by state services, including but not limited to public welfare, public health, rehabilitation and education;

(C) General community interest and participation;

(D) The establishment of programs for the prevention of institutionalization, and habilitation when they do not already exist.

(2) The director shall require the following in the community administration of this program:

(A) Each community-centered program shall be under the control and direction of a board of directors or trustees of a corporation not for profit.

(B) The members of the board of directors or trustees shall be representative of, but not limited to, public, private or voluntary agencies, including political subdivisions of state, which participate in a program for mentally retarded persons in the community.

(C) The community incorporated board shall make application annually to the department of institutions to participate in the state program for mentally retarded persons, and only programs shall be approved which meet the requirements set forth in subsection (1) of this section.

History: En. Sec. 3, Ch. 165, L. 1971.

80-2610. Rules and regulations—other powers of director incident to administration of community-centered services. The director of the department of institutions shall have power to adopt reasonable rules and regulations to govern the administrative proceedings and procedures necessary to carry out the provisions of this act. Such rules and regulations may be amended or revoked from time to time. The director is also authorized to promulgate standards for and supervise programs supported under this act, and to prescribe the form of reports, budgets, holdings of meetings, investigations and evaluations necessarily incident to the administration of this act.

History: En. Sec. 4, Ch. 165, L. 1971.

Effective Date

Section 5 of Ch. 165, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

TITLE 81—STATE LANDS

Chapter
1. Department of state lands and investments—general provisions, 81-102 to 81-108.
3. Selection—classification, appraisal and exchange of lands, 81-301, 81-302, 81-304.
4. Lease of agricultural lands—grazing lands and city and town lots, 81-402, 81-404 to 81-407, 81-412 to 81-416, 81-418, 81-419, 81-421 to 81-424, 81-426, 81-428, 81-433, 81-436.
5. Coal mining leases and permits, 81-501, 81-502, 81-506, 81-508, 81-510.
6. Prospecting permits and mining leases, 81-601 to 81-608, 81-611 to 81-616.
7. Leases and permits for deposits of stone, gravel, sand and other minerals, 81-701, 81-702, 81-704.
8. Granting of easements for public purposes, 81-801 to 81-803.
9. Sale of state lands, 81-901, 81-902, 81-905, 81-908, 81-910, 81-912, 81-915, 81-917, 81-919, 81-921, 81-923, 81-924, 81-926 to 81-928, 81-930, 81-932.
11. State lands and investments—miscellaneous provisions, 81-1101 to 81-1103, 81-1108 to 81-1110, 81-1113, 81-1115 to 81-1122.
13. Reimbursement of federal government for certain emergency conservation work, Repealed—Section 116, Chapter 428, Laws of 1973.
14. State forests—forester—timber sales—firewardens, 81-1403, 81-1411.
16. Timber sales—general provisions, 81-1601, 81-1604.
17. Oil and gas on state lands—disposal of, 81-1702 to 81-1702.2, 81-1705, 81-1706, 81-1712, 81-1716 to 81-1718, 81-1720, 81-1726, 81-1728 to 81-1731.
22. Exchange of timbered, cut or burned over lands, 81-2201 to 81-2205.
23. Certain stream and lake beds and islands property of state, 81-2302, 81-2303, 81-2305.
24. Development of state land resources, 81-2401 to 81-2408.
25. Preservation of antiquities, 81-2501 to 81-2514.

CHAPTER 1—DEPARTMENT OF STATE LANDS AND INVESTMENTS—GENERAL PROVISIONS

Section
81-102. Definitions.
81-103. Powers and duties of board.
81-104. Meetings of board.
81-105. Powers and duties of the department.
81-106. Board to correct errors.
81-107. Money paid by mistake to be refunded.
81-108. Fees.

81-101. (1805.1) Repealed.

Repeal

Section 81-101 (Sec. 1, Ch. 60, L. 1927; Sec. 40, Ch. 100, L. 1973), creating the department of state lands and investments, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-102. (1805.2) **Definitions.** Unless the context requires otherwise, in this title:

(1) "Department" means the department of state lands provided for in Title 82A, chapter 11.

(2) "Board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in section 82A-1104.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of

law. The term does not include lands the state conveys through the issuance of patent, or those lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution.

History: En. Sec. 2, Ch. 60, L. 1927; amd. Sec. 7, Ch. 184, L. 1961; amd. Sec. 2, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; numbered the subdivisions; deleted "and investments" from the titles of the department and commissioner in subdivisions (1) and (3); inserted the constitutional and statutory references at the ends of subdivisions (1), (2) and (3); deleted a clause defining "assistant commissioner"; and made minor changes in phraseology.

81-103. (1805.3) **Powers and duties of board.** The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands, and subject to the investment authority of the board of investments, the funds arising from the leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle is that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well-being of the people of this state; and the board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state. The board shall manage these lands under the multiple-use management concept defined as: The management of all the various resources of the state lands so that they are utilized in that combination best meeting the needs of the people and the beneficiaries of the trust, making the most judicious use of the land for some or all of those resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources, and harmonious and co-ordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources.

History: En. Sec. 3, Ch. 60, L. 1927; amd. Sec. 1, Ch. 113, L. 1969; amd. Sec. 1, Ch. 67, L. 1973; amd. Sec. 3, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 67 and once by Ch. 428. To the extent that the amendatory enactments are conflicting, the provisions of Ch. 428, the later enactment, are set out above by the compiler.

Amendments

The 1969 amendment inserted the third sentence providing for management of state-owned lands under the multiple-use concept.

Chapter 67, Laws of 1973, added the auditor to the board.

Chapter 428, Laws of 1973, deleted "consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution" and "shall be the governing board of the department of state lands and investments" following "board" at the beginning of the first sentence; inserted "subject to the investment authority of the board of investments" in the first sentence; deleted a final sentence saving inherent powers of the board; and made minor changes in style, phraseology and punctuation.

Cross-References

Board functions retained after reorganization, sec. 82A-1505(3).

Leasing State-owned Land

State board of land commissioners had discretion to award ten-year lease to bidder at 33 1/3 per cent crop share, rather than to another who bid 50 per cent, especially where lessee had farmed the land before and the board was taking less risk. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-104. (1805.4) **Meetings of board.** The board shall hold regular meetings at least once each month, and may hold special meetings whenever considered necessary, upon call of the president or a majority of the members. Three (3) members of the board constitute a quorum for the transaction of business. The governor is the president of the board; in his absence the lieutenant governor, shall preside, and in his absence the superintendent of public instruction shall preside.

History: En. Sec. 4, Ch. 60, L. 1927; amd. Sec. 4, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "at least once each month" for "on the second Wednesday of each month" near the beginning of the first sentence; substituted "the lieutenant governor, shall preside, and in his absence" for "in the absence of the lieutenant governor" in the middle of the last sentence; deleted two final sentences authorizing rules for the conduct of meetings and requiring minutes to be kept and documents to be preserved; and made minor changes in phraseology.

81-105. (1805.8) **Powers and duties of the department.** Under the direction of the board of land commissioners, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. It shall perform such other duties the board directs, the purpose of the department demands, or the statutes require. It shall collect and receive all moneys payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. It shall issue a receipt for each cash payment, or whenever requested by the payer.

History: En. Sec. 8, Ch. 60, L. 1927; amd. Sec. 2, Ch. 26, L. 1971; Sec. 81-204, R. C. M. 1947; redes. 81-105 and amd. by Sec. 5, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the requirements for triplicate receipts for payments made to the state through the office of the state commissioner of lands and investments, and substituted the last sentence, providing for receipts for cash payment or upon request.

The 1973 amendment renumbered this section; deleted a first sentence making the commissioner ex officio secretary of the board; substituted references to the department for references to the ex officio secretary of the board; deleted "and the investment of funds arising therefrom or otherwise coming under the administration of the department" from the end of the first sentence; and made minor changes in phraseology.

Effective Date

Section 3 of Ch. 26, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-106. (1805.115) **Board to correct errors.** The board shall correct errors, mistakes, and misdescriptions in deeds and conveyances of property to the state. Deeds or other conveyances shall be made and executed in the manner provided for the execution of patents by the state. The board may also correct errors in leases, certificates of purchase, patents, and other conveyances of property from the state, upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927; Sec. 81-1108, R. C. M. 1947; redes. 81-106 and amd. by Sec. 73, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style, phraseology and punctuation.

81-107. (1805.116) **Money paid by mistake to be refunded.** If any money is erroneously paid to the state on any permit, lease, certificate of

purchase, patent, loan, or in any other transaction, the department shall refund that money to the person entitled to it from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927; Sec. 81-1109, R. C. M. 1947; redes. 81-107 and amd. by Sec. 74, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted the reference to the department for a reference to the state board of land commissioners; and made minor changes in style, phraseology and punctuation.

81-108. (1805.120) **Fees.** The department may prescribe fees, with the approval of the board, for the issuance, filing, or making of a copy of any instrument or for any other service.

History: En. Sec. 120, Ch. 60, L. 1927; amd. Sec. 19, Ch. 121, L. 1965; amd. Sec. 11, Ch. 22, L. 1971; Sec. 81-1113, R. C. M. 1947; redes. 81-108 and amd. by Sec. 76, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the statutory schedule of fees and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners; and made a minor change in phraseology in the final clause.

The 1973 amendment renumbered this section; substituted "department" for "commissioner of state lands and investments"; and substituted the general power to prescribe fees for specifically enumerated powers.

CHAPTER 2—COMMISSIONER OF STATE LANDS AND INVESTMENTS

Section
81-204. [Transferred].
81-205. [Transferred].

81-201 to 81-203. (1805.5 to 1805.7) **Repealed.**

Repeal

Sections 81-201 to 81-203 (Secs. 5 to 7, Ch. 60, L. 1927; Sec. 2, Ch. 138, L. 1943; Sec. 37, Ch. 177, L. 1965), relating to the commissioner of state lands and investments and the state forester, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-204. [Transferred.]

Compiler's Notes

Section 5 of Ch. 428, Laws 1973, redesignated this section as sec. 81-105.

81-204.1. Repealed.

Repeal

Section 81-204.1 (Sec. 1, Ch. 26, L. 1971), relating to deletion of requirement of triplicate receipts of commissioner, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-205. [Transferred.]

Compiler's Notes

Section 6 of Ch. 428, Laws 1973 redesignated this section as sec. 81-1122.

81-206. (1805.10) **Repealed.**

Repeal

Section 81-206 (Sec. 10, Ch. 60, L. 1927), relating to the biennial report of the commissioner of state lands and investments, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-207 to 81-210. (1805.12 to 1805.14) **Repealed.**

Repeal

Sections 81-207 to 81-210 (Secs. 12 to 14, Ch. 60, L. 1927; Sec. 3, Ch. 138, L. 1943; Sec. 1, Ch. 176, L. 1949; Sec. 1, Ch. 164, L. 1951; Sec. 1, Ch. 119, L. 1953; Sec. 4, Ch. 225, L. 1963; Sec. 38, Ch. 177, L. 1965; Sec. 8, Ch. 237, L. 1967; Sec. 1, Ch. 22, L. 1971), relating to the state land commissioner and his office, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 3—SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

Section
81-301. Selection and location of lands granted by United States.
81-302. Classification—reclassification—records.
81-304. Exchange of lands with United States and counties—validation of prior actions.

81-301. (1805.15) **Selection and location of lands granted by United States.** Under the general direction of the board of land commissioners and as rapidly as the appropriations for the work will permit, the department shall select and locate all lands, except timberlands, granted to this state by the United States for any purpose, and not located by the grant itself. It shall also select and locate lands in lieu of all those lands in sections sixteen (16) and thirty-six (36) and in the other federal land grants which for any reason have been lost to the state. All selections shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for these lands for domestic use, livestock, and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927; amd. Sec. 7, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; deleted "he shall cause to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that the state may actually receive all the lands under its various grants" from the end of the third sentence; and made minor changes in style and phraseology.

81-302. (1805.16) **Classification—reclassification—records.** (1) The state lands are classified as follows:

(a) Class 1. Grazing lands, being all those lands which are valuable only for grazing purposes.

(b) Class 2. Timberlands, being all those lands which are principally valuable for the timber that is on them.

(c) Class 3. Agricultural lands.

(d) Class 4. Lands within the limits of any town or city or within three (3) miles of those limits.

(2) The third class, agricultural lands, is subdivided into two (2) classes as follows:

(a) Irrigable lands.

(b) Nonirrigable lands.

(3) The fourth class is subdivided as follows:

(a) Lands within the limits of any town or city.

(b) Lands not within such limits but within three (3) miles thereof.

(4) The classification shall be so made as to place each forty (40) acre tract or lot in the class to which it properly belongs.

(5) If lands formerly nonirrigable become irrigable, or if new towns or cities are located and platted, or in any other case when the board considers it necessary, the lands affected shall be reclassified so that no state land will be sold under a different classification from that to which it actually belongs.

(6) All field books, plats, maps, and records of the department shall show the class to which each tract therein belongs, and whether it belongs to the public schools of the state or to a state institution or other entity according to the grant or instrument by which title to the land has passed to the state; they shall also show whether or not the coal or other minerals in the land are reserved by the United States, and shall contain any other information the department considers necessary.

History: En. Sec. 16, Ch. 60, L. 1927; amd. Sec. 8, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections and lettered the subdivisions; deleted "according to the provisions of the constitution" after "classified" in the preliminary clause of subsection (1); substituted "department" for "commissioner" near the end of subsection (6); and made minor changes in style and phraseology.

81-304. (1805.19) **Exchange of lands with United States and counties —validation of prior actions.** (1) The board may enter into contracts or agreements with the United States, or any department thereof having jurisdiction, for the waiving and relinquishment to the United States of any rights of the state in and to sections sixteen (16) and thirty-six (36) of any township and to any other sections of state lands, provided that the state shall in lieu of the rights so waived and relinquished receive from the United States other lands of equal or greater value.

(2) The board may accept on behalf of the state title in fee simple to any land owned by a county in the state, and may convey in exchange therefor state land of approximately the same area and of a value not higher than the land received from the county if the exchange will result in consolidating the state lands into more compact bodies.

(3) The current user of the land transferred to the United States may continue to enjoy the use of the land under terms and conditions required by the federal government and in accordance with the Multiple Use Act, and the current user on the land received from the United States may continue to utilize the land on the terms and conditions imposed by law or by the board.

History: En. Sec. 19, Ch. 60, L. 1927; amd. Sec. 1, Ch. 151, L. 1933; amd. Sec. 1, Ch. 117, L. 1951; amd. Sec. 1, Ch. 257, L. 1965; amd. Sec. 1, Ch. 39, L. 1967; amd. Sec. 9, Ch. 428, L. 1973.

Compiler's Notes

The Multiple Use Act, referred to in the last paragraph of this section, is compiled in the United States Code as Tit. 43, secs. 1411 to 1418.

Amendments

The 1967 amendment deleted the last sentence of the first paragraph, which read "The amount of state land relinquished under this section in any one year shall not exceed six sections"; and substituted the last sentence of the third paragraph for "The land received from the United States, under this provision, must be located in the same county as the relinquished land, and the present lessees or permittees must be recognized for the continuance of their use of the land on such terms as may be required by the respective agencies."

The 1973 amendment numbered the subsections; deleted from subsection (3) a first sentence validating certain agreements with the United States; and made minor changes in style and phraseology.

81-305, 81-306. Repealed.

Repeal

Sections 81-305, 81-306 (Sec. 1, Ch. 168, L. 1937; Sec. 1, Ch. 61, L. 1955), relating to exchange of lands with the state water conservation board and the United States, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 4—LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

Section

81-402. Lease of state lands—crop share rental basis used.
81-404. Appraisal of grazing lands.
81-405. Renewal leases—preference right of lessee.
81-406. [Transferred.]
81-407. Who may lease—how much and for what length of time.
81-412. Rental, when due—cancellation for nonpayment.
81-413. Land to be leased in compact bodies—inspections to determine best use of land.
81-414. Change in terms of lease.
81-415. Conditions of leases—cancellation for violation of rules.
81-416. Form of lease—bond.
81-418. Liens on crops and improvements.
81-419. Assignment of leases—preferences—fee.
81-421. Compensation for improvements.
81-421.1. Arbitrators to fix value of improvements—appeal.
81-422. Cancellation of leases.
81-423. Leasing regulations.
81-424. Lease of state land to United States for military purposes authorized.
81-426. Filing with board required.
81-428. Proof of termination of lease or pledge to be filed.
81-433. Formula for fixing annual rental.
81-436. Deposit required with bid for lease—retention or return—forfeiture.

81-401. Policy of state as to appraisal and leasing state land.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-402. (1805.20) **Lease of state lands—crop share rental basis used.** (1) Under the general direction and control of the board of land commissioners, the department shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application. As to agricultural lands, all leases shall be continued or made upon a crop share rental basis of not less than one-fourth (¼) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the department may authorize a lease upon other basis than crop share, but in these unusual cases the rental shall at least equal the value of the usual landlord's share prevailing in the district, and the department shall set forth in the records the unusual conditions of the case and the rental to be charged.

(3) The rental rate for leasing all state grazing lands shall be based upon the appraised animal-unit-month carrying capacity of the land as provided in section 81-433. As to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time by the department with the approval of the board and record made thereof, and such town or city property may be leased at its current appraised rental value for terms not to exceed five (5) years.

(4) All leases of agricultural or grazing lands, or town or city lots, shall be upon condition that the board may, in its discretion, offer the land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927; amd. Sec. 2, Ch. 207, L. 1945; amd. Sec. 1, Ch. 254, L. 1947; amd. Sec. 2, Ch. 201, L. 1949; amd. Sec. 2, Ch. 260, L. 1963; amd. Sec. 2, Ch. 257, L. 1965; amd. Sec. 10, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "by" for "under the direction of" in the second sentence of subsection (3); and made minor changes in style and phraseology.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-404. Appraisal of grazing lands. (1) The department shall appraise the grazing lands owned by the state as to their animal-unit-month carrying capacity, and make and preserve records thereof in its office, and from time to time re-examine these lands as to their animal-unit-month carrying capacity so as to keep the records thereof in its office reasonably accurate.

(2) In appraising these grazing lands the following factors shall be taken into consideration:

(a) Inventory of the forage resources—kind, amount, and location of vegetation.

(b) Accessibility and usability of this forage resource as influenced by topography, availability of stock water, and season of usability.

(c) Condition of soils—the erosion situation.

(d) Other and related resources—such as timber, game animals, need for watershed protection.

(e) Record of needed improvements and facilities—fuel and stock water, revegetation, rodent control, trails, fences, and the like.

(f) Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.

(g) Carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945; amd. Sec. 11, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; substituted "appraise" for "cause the grazing land owned by the state to be appraised" near the beginning of subsection (1); substituted "re-examine" for "cause said lands to be re-examined" near the end of subsection (1); and made minor changes in style and phraseology.

81-405. (1805.21) **Renewal leases—preference right of lessee.** (1) A lessee of state land classed as agricultural, grazing, town lot or city lot, who has paid all rentals due from him to the state, and who has not violated the terms of his lease, is entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law

for the renewal period, and subject to any other conditions at the time of the renewal imposed by law as terms of the lease at any time within thirty (30) days prior to its expiration if no other applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945; amd. Sec 3, Ch. 260, L. 1963; amd. Sec. 12, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "may withdraw" for "shall withdraw" near the beginning of subsection (2); substituted "department" for "commissioner" at the end of subsection (2); and made minor changes in style and phraseology.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

81-406. [Transferred.]

Compiler's Notes

Section 13 of Ch. 428, Laws 1973, redesignated this section as sec. 81-421.1.

81-407. (1805.23) **Who may lease—how much and for what length of time.** No person may lease state lands, except one who is the head of a family, unless he has attained the age of eighteen (18) years. Any such person and any association, company, or corporation authorized to hold lands under lease may lease state lands, and may hold more than one (1) lease to state lands, and there may be included under one (1) lease tracts of lands embracing more than one (1) section. No lease to agricultural or grazing lands may be for a period other than five (5) or ten (10) years. Leases for city and town lots may not exceed five (5) years. When a lease expires or is canceled the department shall immediately notify the holder of the lease and all persons who have expressed an interest in leasing the land during, or immediately preceding, the term of the expired or canceled lease. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land which are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927; amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2, Ch. 65, L. 1939; amd. Sec. 5, Ch. 260, L. 1963; amd. Sec. 18, Ch. 240, L. 1971; amd. Sec. 30, Ch. 94, L. 1973; amd. Sec. 14, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 94 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to

conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment reduced the age specified at the end of the first sentence from 21 to 19 years.

Chapter 94, Laws of 1973, reduced the age specified at the end of the first sentence from nineteen to eighteen years.

Chapter 428, Laws of 1973, inserted "and may hold more than one (1) lease to state lands" in the middle of the second sentence; deleted a sentence restricting the duration of leases; substituted "department" for "commissioner" near the beginning of the present fourth sentence; and made minor changes in phraseology and style.

81-412. (1805.26) **Rental, when due—cancellation for nonpayment.** The rental for the first year of the lease shall be paid at or before the time of the execution of the lease; however, in the case of leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of the lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the United States is the lessee, is due and payable before March 1, and if not paid by April 1 the lease is canceled. The department shall notify the lessee by letter addressed to the post-office address given in the lease of the cancellation, and the land is then open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927; amd. Sec. 1, Ch. 197, L. 1943; amd. Sec. 2, Ch. 22, L. 1971; amd. Sec. 15, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated the fee of $2.50 for issuing the lease, and granted general authority for the commissioner of lands and investments to establish the fee with the approval of the board of land commissioners.

The 1973 amendment deleted "and such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for issuing the lease" following "rental for the first year of the lease" near the beginning of the first sentence; deleted "to the commissioner of state lands and investments" following "due and payable" in the third sentence; substituted "before March 1" for "on December 15 next preceding the rental year to which the rental applies" in the third sentence; substituted "by April 1" for "on or before February 1 next following" near the end of the third sentence; substituted "is canceled" for "this nonpayment shall have the effect of canceling the lease from and after February 28 of that year" at the end of the third sentence; substituted "department" for "commissioner" in the last sentence; and made minor changes in style and phraseology.

81-413. (1805.27) **Land to be leased in compact bodies—inspections to determine best use of land.** All lands shall be leased in as compact bodies as possible, and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in a form that will make it more difficult to lease the remaining state lands in the section in which they are located. If there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an inspection of the land shall be made by the department at the earliest practical opportunity and a determination made, based on its findings, of the highest and best use which can be made of the land or portions thereof. Any lease of the land subsequent to the applications or

bids shall be such as to return to the state revenue commensurate with the highest and best use.

History: En. Sec. 27, Ch. 60, L. 1927; amd. Sec. 3, Ch. 257, L. 1965; amd. Sec. 16, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner and his field agent; and made minor changes in style and phraseology.

81-414. (1805.28) **Change in terms of lease.** When land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall, before doing any such cultivation, make application to the department stating how much land he desires to cultivate and showing the location in the section of the land, and agree that for the remainder of the term of the lease the annual rental shall be at the rate of the original lease until such time as the first crop is harvested from the cultivated portion of the lease. At the time of the first harvest, the lease shall be at the original rate for that portion remaining as grazing land plus the crop share rental for that portion cultivated. If any person cultivates lands leased for grazing purposes without first securing the right to do so under this section, the department shall either cancel the lease, subject to the appeal procedure provided in section 81-422, or require the lessee to pay twice the regular agricultural rental on the land so cultivated in addition to the grazing rental. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927; amd. Sec. 9, Ch. 207, L. 1945; amd. Sec. 1, Ch. 120, L. 1963; amd. Sec. 2, Ch. 27, L. 1971; amd. Sec. 17, Ch. 428, L. 1973.

Amendments

The 1971 amendment inserted "by the commissioner subject to the appeal procedure provided in section 81-422, R. C. M. 1947" in the third sentence.

The 1973 amendment substituted references to the department for references to the commissioner; deleted "send his lease to the commissioner to have the necessary changes made therein" following "location in the section of the land" in the first sentence; substituted "the department shall either cancel the lease" for "the lease shall be subject to cancellation by the commissioner" in the third sentence; substituted "require the lessee to pay" for "the lessee shall be liable for" near the end of the third sentence; deleted "thereof as may be decided by the board" from the end of the third sentence; and made minor changes in style and phraseology.

81-415. Conditions of leases—cancellation for violation of rules. (1) It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall handle the leased land with the view of maintaining its productivity and minimizing wind and soil erosion and noxious weeds, and planting crops with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall manipulate the numbers, class, distribution, and season of the range use and the handling, feeding, breeding, and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land lease may not be abused by overgrazing.

(2) For the gross violation of any of these rules, the lease involved shall be canceled by the department, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 10, Ch. 207, L. 1945; amd. Sec. 4, Ch. 254, L. 1947; amd. Sec. 3, Ch. 27, L. 1971; amd. Sec. 18, Ch. 428, L. 1973.

Amendments

The 1971 amendment, in the second paragraph, provided for mandatory cancellation by the commissioner subject to appeal to the board, rather than discretionary cancellation by the board on recommendation by the commissioner and after notice and opportunity for hearing.

The 1973 amendment numbered the subsections; substituted the reference to the department for a reference to the commissioner in subsection (2); and made minor changes in style and phraseology

81-416. (1805.29) **Form of lease—bond.** The general form of lease to state lands shall be prescribed by the board, and no changes in the form for these leases may be made without the approval of the board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the department. Unless the board decides otherwise, these leases shall be issued without bonds, but the board may require a bond and prescribe the form and conditions thereof whenever it considers it necessary.

History: En. Sec. 29, Ch. 60, L. 1927; amd. Sec. 19, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the reference to the department for a reference to the commissioner; and made minor changes in style and phraseology.

81-418. (1805.31) **Liens on crops and improvements.** The state has a lien upon all crops growing upon any of its lands, and upon the crops after they have been separated from the lands for any rentals and penalties due or delinquent under the lease on the lands, or becoming due during the calendar year in which the crops are harvested, for any year or part of a year that the land has been held or used by the lessee. This lien applies to all buildings, structures, fences, and all other improvements, and is prior and superior to all other liens, except threshermen's liens and seed liens specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accu mulating on such basis, exclusive of any other future advances originally contemplated. Any person acquiring any of these crops or improvements takes them subject to this lien. The department or the sheriff of the county in which the land is located may demand of the lessee payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or the department, may seize and sell, either at a private or public sale, upon giving notice for not less than three (3) days of the sale, sufficient of those crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city, or other lots.

History: En. Sec. 31, Ch. 60, L. 1927; amd. Sec. 20, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the final clause of the second sentence, begin-

ning "but only for the aggregate amount," for "as specified in section 52-301"; deleted "or his deputy" following "sheriff of the county in which the land is located" in the fourth sentence; deleted "or his agent" following "may demand of the lessee" in the fourth sentence; deleted "any personal representative of" before "the department, may seize," in the fourth sentence; and made minor changes in style and phraseology.

81-419. (1805.32) **Assignment of leases — preferences — fee.** Leases to state lands may be assigned on blanks prescribed by the department, but no assignment is binding on the state unless the assignment is filed with the department, approved by it and payment made of the assignment fee under section 81-108. Preference shall always be given to the applicant who wants the land for his own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil, and so that they are not compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, or subleases state lands without filing a copy of the sublease with the department and without receiving its approval, the department shall cancel the lease, subject to the appeal procedure provided in section 81-422.

History: En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945; amd. Sec. 18, Ch. 121, L. 1965; amd. Sec. 3, Ch. 22, L. 1971; amd. Sec. 4, Ch. 27, L. 1971; amd. Sec. 21, Ch. 428, L. 1973.

Amendments

Chapter 22, Laws of 1971, deleted the assignment fee of $3.00 and the sublease fee of $2.00 and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 27, Laws of 1971, combined the former last two sentences into the present last sentence and provided for mandatory cancellation by the commissioner, subject to appeal, rather than discretionary cancellation by the board after hearing. For prior version, see parent volume.

The 1973 amendment substituted references to the department for references to the state board of land commissioners; substituted "the assignment fee under section 81-108" for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners" at the end of the first sentence; and made minor changes in style and phraseology.

81-421. (1805.34) **Compensation for improvements.** (1) A lessee of state lands may place upon the lands a reasonable amount of improvements directly related to conservation of the land or necessary for proper utilization of it. These improvements may consist of fences, cultivation, and improvement of the land itself, irrigation ditches, sheds, wells, and reservoirs, and similar improvements. When another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. However, if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) year's crops have been raised on the land after the breaking, the compensation for the breaking may not exceed two dollars and fifty cents ($2.50) per acre, and if two (2) or more crops have been raised on the land after the breaking, the breaking shall not be considered as an improvement to the land. If the former lessee and the new lessee are unable to agree on the reasonable value of the improvements, the value shall be ascertained and fixed as provided in section 81-421.1.

(2) In determining the value of these improvements, consideration shall be given to their original cost, their present condition, their suitableness for the uses ordinarily made of the lands on which they are located, and to the general state of cultivation of the land, its productive capacity as affected by former use, and its condition with reference to the infestation of noxious weeds. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove the movable improvements on the land and dispose of them to parties other than the lessee; if he fails to remove the improvements from the land within sixty (60) days from the date of the expiration of his lease, all of the improvements become the property of the state, unless the department for good cause grants additional time for their removal. Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under section 81-421.1, or that he has offered to pay the value of the improvements as so fixed and determined, or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927; amd. Sec. 4, Ch. 257, L. 1965; amd. Sec. 22, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "section 81-421.1" for "this act" at the end of subsection (1); substituted "department" for "commissioner" near the end of the third sentence; changed the statutory reference near the end of the last sentence in subsection (2) from section 81-406 to section 81-421.1; and made numerous minor changes in style and phraseology.

81-421.1. (1805.22) **Arbitrators to fix value of improvements—appeal.** If the owner of any improvements on state lands of the type authorized by law at the time they were placed thereon desires to sell these improvements to the new lessee, and they are unable to agree on the value thereof, the value shall be ascertained and fixed by three (3) arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that the arbitrators may fix shall be paid in equal shares by the owner of the improvements and the new lessee. The value of the improvements so ascertained and fixed is binding on both parties, however, if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the department which shall examine the improvements, and its decision shall be final. The department shall charge and collect the actual cost of the re-examination to the owner and the new lessee in such proportion as in its judgment justice may demand. The value of the improvements shall be ascertained and fixed as section 81-421 provides.

History: En. Sec. 22, Ch. 60, L. 1927; amd. Sec. 4, Ch. 260, L. 1963; Sec. 81-406, R. C. M. 1947; redes. 81-421.1 and amd. by Sec. 13, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commissioner; deleted "thereupon cause the chief field agent or assistant field agent to" before "examine the improvements" near the end of the second sentence; substituted "section 81-421 provides" for "hereinafter and in this act provided" at the end of the section; and made minor changes in style and phraseology.

81-422. (1805.36) **Cancellation of leases.** (1) The department may cancel a lease for any of the following causes: fraud, misrepresentation, or concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; using the land for other purposes than those authorized by the lease; and for any other cause which in the judgment of the department makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation does not entitle the lessee to any refund of rentals paid or exemption from the payment of any rentals, penalties, or other compensation due the state.

(2) When the department cancels a lease pursuant to this section or sections 81-414, 81-415, or 81-419, it shall immediately notify the lessee by certified mail of the cancellation and the reasons therefor. The date of cancellation is fifteen (15) days from the date the notice is received by the lessee. The lessee has fifteen (15) days after the receipt of the notice to file with the department a notice of appeal for a hearing before the board. If notice of appeal is filed, the lease remains in effect until the decision of the board. Within ten (10) days after notice of appeal has been filed, the department shall set the time and place of hearing and shall so notify the lessee. The board may, after ten (10) days' notice to the lessee, change the time and place of hearing.

(3) Under rules it adopts, the board shall conduct an open hearing to determine whether the lease should be reinstated. The burden of proof is on the lessee to show why the lease should not be canceled. If the lease is reinstated, all of the lessee's rights and privileges thereunder shall be preserved; if not, the land shall be open for releasing as provided by law. If the board finds that the terms of the lease have been violated, but in its judgment the violation is not serious enough to warrant cancellation, it may reinstate the lease and assess a penalty up to three (3) times the annual rental against the lessee.

History: En. Sec. 36, Ch. 60, L. 1927; amd. Sec. 5, Ch. 27, L. 1971; amd. Sec. 23, Ch. 428, L. 1973.

Amendments

The 1971 amendment substituted "commissioner" for "board" in two places; added the last two paragraphs on the procedure for cancellation by the commissioner and appeal to the board; and made a minor change in phraseology.

The 1973 amendment numbered the subsections; substituted references to the department for references to the commissioner; inserted "for a hearing before the board" at the end of the third sentence in subsection (2); deleted from subsection (3) a second sentence reading "All testimony shall be given under oath and reduced to writing"; and made minor changes in style and phraseology.

Effective Date

Section 6 of Ch. 27, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

81-422.1. Repealed.

Repeal

Section 81-422.1 (Sec. 1, Ch. 27, L. 1971), relating to the procedure for terminating leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-423. (1805.37) **Leasing regulations.** The board may prescribe rules and regulations relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute

in the highest attainable measure to the purposes for which they are granted to the state.

History: En. Sec. 37, Ch. 60, L. 1927; amd. Sec. 24, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the reference to the board for a reference to the state board of land commissioners; and made minor changes in style and phraseology.

81-424. Lease of state land to United States for military purposes authorized. The board, when it considers it in the public interest, may lease to the United States, for military purposes, any state land, whether such land was received by the state through federal land grants, or whether such land consists of so-called "mortgage lands," on such terms and conditions as it considers necessary to promote the public welfare and protect the interests of the state; rental shall be payable at the end of each year of the lease.

History: En. Sec. 1, Ch. 122, L. 1943; amd. Sec. 25, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "Notwithstanding any inconsistent provision of law, general, special or local" from the beginning of the section; and made numerous changes in style and phraseology.

81-426. Filing with board required. The pledgee of such lease or the mortgagee of such leasehold interest shall, within thirty (30) days after receipt of the pledge agreement or mortgage, file it, or a certified copy thereof, with the department.

History: En. Sec. 2, Ch. 52, L. 1947; amd. Sec. 21, Ch. 121, L. 1965; amd. Sec. 4, Ch. 22, L. 1971; amd. Sec. 26, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of $2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment substituted "the department" for "the state board of land commissioners" at the end of the section; deleted "and shall pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for the filing thereof" from the end of the section; and made minor changes in phraseology.

81-428. Proof of termination of lease or pledge to be filed. The lessee of any grazing or agricultural lease of or leasehold interest in state lands which is pledged or mortgaged as provided in sections 81-425 through 81-431 shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement is terminated or the leasehold interest is released from the mortgage, file with the department proof of that fact.

History: En. Sec. 4, Ch. 52, L. 1947; amd. Sec. 20, Ch. 121, L. 1965; amd. Sec. 5, Ch. 22, L. 1971; amd. Sec. 27, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of $2.00, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment inserted the statutory reference to sections 81-425 through 81-431; substituted "department" for "state board of land commissioners"; deleted "and pay to said board such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for said filing" from the end of the section; and made minor changes in style and phraseology.

81-433. Formula for fixing annual rental. (1) In this section:

(a) "Animal unit" means one (1) cow, one (1) horse, five (5) sheep, or five (5) goats.

(b) "Animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one (1) animal unit for one (1) month.

(2) The board shall establish the per annum rental rate per section of all grazing lands which are the property of the state upon the animal-unit-month basis as provided in this section.

(3) In fixing the minimum annual rental per section, the following formula shall be used:

The base rental shall be computed by multiplying fifty cents ($.50) plus three (3) times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(a) to (c). * * * [Same as parent volume.]

(4) The carrying capacity of the land, to be used in the above formula, shall be in accordance with the determinations of the department made under section 81-404.

(5) The average price per pound of beef cattle on the farm in Montana shall be taken from statistics published by the United States department of agriculture current at the time of computation of the rental, or from other reliable sources current at such time.

History: En. Sec. 2, Ch. 190, L. 1949; amd. Sec. 1, Ch. 229, L. 1951; amd. Sec. 1, Ch. 284, L. 1959; amd. Sec. 6, Ch. 260, L. 1963; amd. Sec. 1, Ch. 97, L. 1973; amd. Sec. 28, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 97 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 97, Laws of 1973, increased the base rental from 32 cents plus twice the price of beef to 50 cents plus three times the price of beef.

Chapter 428, Laws of 1973, numbered the subsections; lettered the subdivisions in subsection (1); substituted "department" for "commissioner of state lands and investments" near the end of subsection (4); deleted "the bureau of agricultural economics of" before "the United States department of agriculture" in subsection (5); and made minor changes in style and phraseology.

81-436. Deposit required with bid for lease—retention or return—forfeiture. A person bidding for the lease of state lands shall deposit with the department, as evidence of good faith, a certified check, cashier's check, or money order in an amount equal to the annual rental bid in the case of grazing land, and an amount equal to one dollar ($1) per acre for each acre of agricultural land contained in the lease in the case of agricultural land on which the bid is made on a crop share basis. The department shall retain the deposit of the successful bidder and apply it on the rental for the first year of the lease only, and return any balance of the deposit at the end of the first year to the successful bidder, and return the deposits of the unsuccessful bidders. If the successful bidder fails to execute the lease for any reason, his deposit shall be forfeited and deposited by the department to the credit of the proper interest and income account in the federal and private revenue fund.

History: En. Sec. 1, Ch. 185, L. 1963; amd. Sec. 29, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

CHAPTER 5—COAL MINING LEASES AND PERMITS

Section
81-501. Coal mining leases.
81-502. Maximum term of lease—form.
81-506. Improvements of former lessee.
81-508. Report and payment of royalty.
81-510. Disposition of royalties and other receipts.

81-501. (1805.38) **Coal mining leases.** (1) The state board of land commissioners may lease in such manner as it considers in the best interests of the state any state lands to which the title is vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling, and disposing of the coal therein, upon the terms and conditions herein stated, and subject to such rules and regulations as the board prescribes. This power extends to state lands no matter how acquired, and extends to state lands which have been sold but in which the coal rights are reserved by the state, whether the lands are under certificate of purchase or patents have been issued; in such cases and in all cases where the lands are under lease for grazing, agriculture, or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

(2) These coal leases are subject to the condition that the coal must be mined, handled, and marketed in a manner that will prevent as far as possible all waste of coal, and are also subject to the condition that the mining operations shall be carried on in a systematic and orderly manner that will not make subsequent mining operations more difficult or expensive. A violation of any of these conditions is grounds for the forfeiture of the lease, after a hearing before the board.

History: En. Sec. 38, Ch. 60, L. 1927; amd. Sec. 30, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections and made numerous changes in style and phraseology.

81-502. (1805.39) **Maximum term of lease—form.** No coal mining lease may be issued for more than twenty (20) years, but the board may establish rules for the renewal of a lease at the expiration of the term it considers proper and necessary. The board shall prescribe the form of the lease.

History: En. Sec. 39, Ch. 60, L. 1927; amd. Sec. 5, Ch. 257, L. 1965; amd. Sec. 1, Ch. 121, L. 1967; amd. Sec. 6, Ch. 22, L. 1971; amd. Sec. 1, Ch. 291, L. 1971; amd. Sec. 31, Ch. 428, L. 1973.

Amendments

The 1967 amendment increased the maximum term for leases on state lands from 10 to 20 years, and increased the fee from $2 to $5.

Chapter 22, Laws of 1971, deleted the fee of $5.00 for issuing the lease and approving the bond, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

Chapter 291, Laws of 1971, added the second paragraph.

The 1973 amendment deleted "the fee for issuing the lease and proving the bond hereinafter provided shall be such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners payable to the commissioner" from the end of the first paragraph; deleted a second paragraph giving temporary exchange rights to certain lessees; and made minor changes in style and phraseology.

81-506. (1805.43) **Improvements of former lessee.** When a coal mining lease is applied for on land where mining operations have been carried on by a former lessee, and there are surface or underground improvements on the land used at the former operations, disposition shall be made of the improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree on the value of such improvements, then such value shall be ascertained and fixed as provided in section 81-421.1.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

History: En. Sec. 43, Ch. 60, L. 1927; amd. Sec. 32, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the reference at the end of the first paragraph from section 81-406 to 81-421.1; and made minor changes in style and phraseology.

81-508. (1805.45) **Report and payment of royalty.** On or before the last day of each month every holder of a producing coal mining lease shall make a report to the department on a form the department prescribes, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales, and any additional information required by the department. The report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for the preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927; amd. Sec. 33, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "last day of each month" for "fifteenth day of each calendar month" near the beginning of the section; substituted "every holder of a producing coal mining lease" for "the lessee"; substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

81-510. (1805.47) **Disposition of royalties and other receipts.** The department shall credit fees and penalties collected under coal mining leases to the general fund, and rentals, royalties, and bonuses to the permanent fund arising from the grant to which the land under each particular lease belongs.

History: En. Sec. 47, Ch. 60, L. 1927; amd. Sec. 34, Ch. 428, L. 1973.

Amendments

The 1973 amendment rearranged the language; substituted "department" for "com-

missioner"; inserted a new clause providing for credits to the general fund; substituted "the permanent fund arising from the grant to which the land under each particular lease belongs" at the end of the section for "the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this act"; and made other minor changes.

CHAPTER 6—PROSPECTING PERMITS AND MINING LEASES

Section
81-601. Definitions.
81-601.1. Prospecting permits.
81-602. Empowering board to lease, etc.
81-603. Provisions of leases.
81-604. Royalties—pooling agreements and unit plans of operation.
81-605. Quantity of lands.
81-606. Applications.
81-607. Bonds to state.
81-608. Bonds to protect lessees, contractees, etc.
81-611. Examination of lands.
81-612. Failure of title.
81-613. Assignment of leases or permits.
81-614. [Transferred].
81-615. [Transferred].
81-616. Notice to lessees.

81-601. Definitions. In this chapter:

(1) "Metalliferous minerals" mean gold, silver, lead, zinc, copper, platinum, iron, and all other metallic minerals.

(2) "Gems" mean sapphires, rubies, and other stones commonly known as "precious stones" or "semiprecious stones," but do not mean stones or other earth materials commonly used in building or construction work.

(3) "Mining" means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals or gems.

(4) "Mining lease" means a lease issued by the state board of land commissioners for the prospecting for or mining of metalliferous minerals or gems. The term "Mining lessee" means the holder of a mining lease whether the holder is the original lessee under the lease, or holds the lease as successor of the original lessee.

(5) "Returns" mean the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

(6) "Full market value" means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937; amd. Sec. 35, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted numbers for letters in designating the subsections; and made minor changes in style and phraseology.

81-601.1. Prospecting permits. Prospecting permits without lease may be issued by the board upon the payment of the issuance fee under section 81-108. The permittee shall also pay an annual fee established by the department and approved by the board at the end of each year during the life of the permit. A permit shall provide for due diligence in the work of prospecting during the life of the permit. A permit shall be limited to prospecting for metalliferous minerals or gems and no permittee may remove from any lands or mineral rights covered by the permit any metalliferous minerals or gems except such as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it shall be in the form and subject to all the terms and conditions specified in this chapter, as in the case of a mining lease issued under this chapter. The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this chapter, and in any event the permittee has preference without competitive bidding, and upon the most favorable terms permitted under this chapter, to forty (40) contiguous acres. If some other person makes a better bid for a mining lease upon the land covered by the permit, and if the board awards a mining lease to a better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee may remove from the land, within thirty (30) days from the date the board gives the permittee notice of the issuance of the mining lease, or within such further time as the board, upon good cause shown, allows, any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937; amd. Sec. 9, Ch. 22, L. 1971; Sec. 81-615, R. C. M. 1947; redes. 81-601.1 and amd. by Sec. 47, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated statutory fees for issuance of prospecting permits without lease, and granted general authority for the commissioner of lands and investments to prescribe such fees with the approval of the board of land commissioners.

The 1973 amendment renumbered this section; deleted a first sentence saving permits and leases outstanding in 1937; substituted references to the department for references to the commissioner of state lands and investments; substituted "the issuance fee under section 81-108" at the end of the first sentence for "such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners at the time of the issuance of such permits"; substituted "The permittee shall also pay an annual fee established by the department and approved by the board" for "and such further fees as may be established by the commissioner of state lands and investments with approval of the state board of land commissioners" at the beginning of the second sentence; and made minor changes in style and phraseology.

81-602. Empowering board to lease, etc. The board may, in its discretion, subject to the other provisions of this chapter, lease state lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserved mineral rights of the state in lands sold or leased by the state, to any person, association, or corporation, for the purpose of prospecting for or mining metalliferous minerals or gems.

These leases may be for a period of time determined by the board, subject to limitations contained in the grants by which the state has acquired title to lands or mineral rights so leased.

History: En. Sec. 2, Ch. 148, L. 1937; amd. Sec. 36, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-603. Provisions of leases. Leases issued under this chapter shall give the lessee, so long as he complies with the terms and conditions of the lease, the exclusive right of possession of the lands or mineral rights leased, subject to any reservations contained in the leases. A lease may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of mining after the prospecting period. It may provide for the payment of rentals in conjunction with the work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board considers best. It shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions, and reasonable terms under which the lessee may, within a time limited in the lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time. It may also contain other provisions the board and the lessee agree upon, not inconsistent with this chapter. In short the board in making the leases may exercise business discretion, so long as this chapter is not violated. No mining lessee may, during any preliminary prospecting period contained in any lease, remove any metalliferous minerals or gems from the leased premises, except as are necessary for the proper testing and sampling of the lands or mineral rights, and except as are permitted by the board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it considers best, amend or modify the terms and conditions within the limitations of this chapter or extend the term of any lease or prospecting permit issued under this chapter, subject to the limitations contained in section 81-602.

History: En. Sec. 3, Ch. 148, L. 1937; amd. Sec. 1, Ch. 205, L. 1947; amd. Sec. 37, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, punctuation and phraseology.

81-604. Royalties—pooling agreements and unit plans of operation. (1) In every mining lease the board shall reserve to the state a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value as ascertained by the board of the leasehold interest conveyed by the lease. This royalty may not be less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals or gems recovered by the lessee from the state lands or reserved mineral rights covered by the lease.

(2) The board may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands, for unit operation of placer mining and the apportionment of royalties on

a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights, and partly on land in which others hold the mining rights. From each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state is entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup. The board may also enter into agreements for the unit operation of such placer mining deposits and the apportionment of royalties upon any other equitable basis the board considers in the best interest of the state. The agreements may not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a smaller percentage than the five per cent (5%) minimum under this section.

History: En. Sec. 4, Ch. 148, L. 1937; amd. Sec. 2, Ch. 205, L. 1947; amd. Sec. 38, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "smaller percentage than the five per cent (5%) minimum under this section" for "less percentage than the minimum provided by law" at the end of subsection (2); and made minor changes in style, phraseology and punctuation.

81-605. Quantity of lands. A mining lease shall cover the quantity of ground the board determines to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which the lands are to be mined, and the character and size of the operation contemplated, necessary, or reasonable in good mining practice, for the profitable recovery of the metalliferous minerals or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937; amd. Sec. 39, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-606. Applications. Application for a mining lease shall be made to the department on a form prescribed by it.

History: En. Sec. 6, Ch. 148, L. 1937; amd. Sec. 40, Ch. 428, L. 1973.

Amendments

The 1971 amendment eliminated provisions for a maximum fee of $100 and setting forth criteria for the determination thereof, and instead granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment rewrote this section, which formerly provided for the forms of applications to be prepared by the state board of land commissioners and for a fee to be paid at the time of issuance of a mining lease.

81-607. Bonds to state. The board may, at the time of the execution and delivery of a mining lease, or at any time during the life of the lease, require a mining lessee to file with the department, for the benefit of the state, a bond or bonds conditioned to protect the rights of the state, particularly in the payment to the proper officer of the state of the royalties reserved in the mining lease. The bond or bonds shall be in a form and amount prescribed by the board. The board may at any time require

new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds previously filed.

History: En. Sec. 7, Ch. 148, L. 1937; amd. Sec. 41, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the department" for "the board" in the first sentence; substituted "and amount prescribed by the board" at the end of the second sentence for "and the sufficiency thereof to be subject to the approval of the board"; deleted "with it in connection with any such mining lease" from the end of the last sentence; and made minor changes in style and phraseology.

81-608. Bonds to protect lessees, contractees, etc. If the lands at the time of the issuance of a mining lease have been sold, or are under contract of sale, or have been leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of the prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with the department a corporate surety bond in a reasonable amount fixed by the board, conditioned to protect the rights of the prior purchaser, contractee, or lessee. The form of the bond shall be prescribed by the board, and the bond shall run to the state for the benefit of the prior purchaser, contractee, or lessee. New or additional bonds may be required by the board at any time. Suit may be brought upon the bond by any such prior purchaser, contractee, or lessee, for alleged violation of the terms of the bond by the mining lessee, and such suit shall be brought by the claimant in the name of the state for the use and benefit of the claimant, and any recovery upon the bond shall be paid to the claimant.

History: En. Sec. 8, Ch. 148, L. 1937; amd. Sec. 42, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "the department" for "said board" preceding "a corporate surety bond" near the end of the first sentence; and made minor changes in style and phraseology.

81-611. Examination of lands. Before the board leases any lands for the mining of metalliferous metals or gems, the department shall investigate the character of the lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether those lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which the lands should be leased for mining purposes under this chapter. Upon the filing of an application for a mining lease the board may, if the lands covered by the application have not been examined by the department, require the applicant for the lease to deposit with the department an amount of money, not exceeding five hundred dollars ($500) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon the application in accordance with this chapter. Such deposit shall be used to reimburse the state for the actual cost of the examination, and any portion of the deposit not required for such reimbursement shall, upon the approval or rejection of the application, be repaid to the applicant by the department. The department shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937; amd. Sec. 43, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the board; and made minor changes in style and phraseology.

81-612. Failure of title. In issuing mining leases, the board and the state have leased only such right, title, and interest as the state has in the lands, metalliferous minerals or gems therein contained. Neither the state, the board, nor any representative, agent, or employee of the state or the board, are under any liability for the failure of the title of the state, in whole or in part, to the lands, metalliferous minerals, or gems covered by the lease.

History: En. Sec. 12, Ch. 148, L. 1937; amd. Sec. 44, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-613. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing the assignment is not relieved of any responsibility for operations under the lease or prospecting permit until the financial and moral responsibility of the assignee has been approved by the board, nor until there is deposited with the department:

(a) The assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any bonds then held by the board in connection with the mining lease or permit and then in force, consenting to the assignment and containing the agreement of the sureties to be bound by the bonds under the assignment, or new bonds conforming to all the requirements of section 81-607; and

(c) A fee prescribed under section 81-108.

History: En. Sec. 13, Ch. 148, L. 1937; amd. Sec. 8, Ch. 22, L. 1971; amd. Sec. 45, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted from subdivision (c) the fee of $2.50, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment substituted "department" for "board" at the end of the preliminary paragraph; rewrote subdivision (c), which formerly read "Such fee as may be prescribed by the commissioner of the state lands and investments with the approval of the state board of land commissioners"; and made minor changes in style and phraseology.

81-614. [Transferred.]

Compiler's Notes

Section 46 of Ch. 428, Laws 1973, redesignated this section as sec. 81-2305.

81-615. [Transferred.]

Compiler's Notes

Section 47 of Ch. 428, Laws 1973, redesignated this section as sec. 81-601.1.

81-616. Notice to lessees. Upon the approval of an application for a prospecting permit or a mining lease under this chapter, the department shall promptly give written notice, by ordinary mail, to the lessee or

permittee, and to any holder of an agricultural or grazing lease embracing the same land, or to any holder of a certificate of purchase or patent embracing the same land. The notice shall be addressed to the permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post-office address.

History: En. Sec. 16, Ch. 148, L. 1937; amd. Sec. 48, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "approval" for "granting" near the beginning of the first sentence; substituted "department" for "commissioner of state lands and investments" near the beginning of the first sentence; substituted "lessee or permittee" for "person, association of persons, or corporation to whom such permit or lease shall be so issued" in the middle of the first sentence; deleted "if there be such purchaser or patentee" at the end of the first sentence; and made minor changes in style and phraseology.

81-618 to 81-620. Repealed.

Repeal

Sections 81-618 to 81-620 (Sec. 18, Ch. 148, L. 1937; Secs. 1, 2, Ch. 205, L. 1945; Sec. 1, Ch. 146, L. 1953), repealing prior law and relating to leases outstanding under the prior law, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 7—LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND AND OTHER MINERALS

Section
81-701. The board may issue leases.
81-702. Report of lessee and payment and distribution of royalties and other receipts.
81-704. Stone, gravel and sand permits for public use.

81-701. (1805.52) **The board may issue leases.** When there are found upon state lands deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand, or phosphate, sodium, potash, sulphur, fluorite or barite, or any other nonmetallic minerals, but not including coal, oil, or gas, valuable for building, mining, or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of the above named deposits, upon such terms and conditions as the board may determine. All such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands. The gross value shall be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board is fair and reasonable. The fee for issuing the lease is the same as for an oil and gas lease. No such lease shall be made for a longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both a cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927; amd. Sec. 1, Ch. 194, L. 1945; amd. Sec. 1, Ch. 147, L. 1953; amd. Sec. 1, Ch. 207, L. 1961; amd. Sec. 49, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "to which the title is vested in the state, and which lands have not been sold by the state under certificate of purchase, or otherwise" following "When there are found upon state lands" at the beginning of the section; and made minor changes in style and phraseology.

81-702. (1805.53) **Report of lessee and payment and distribution of royalties and other receipts.** On or before the last day of each month, every holder of a producing lease under this chapter, shall make a report to the department of state lands on a form the department prescribes, showing the amount of substances mined or extracted from the lands in the preceding month, the price obtained, the total amount of sales and any additional information required. The report shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees, and penalties received under these leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927; amd. Sec. 2, Ch. 194, L. 1945; amd. Sec. 50, Ch. 428, L. 1973.

Amendments

The 1973 amendment changed the date on which the report is due from the fifteenth to the last day of the month; inserted "producing" before "lease" near the beginning of the first sentence; substituted references to the department of state lands for references to the state board of land commissioners; and made minor changes in style and phraseology.

81-704. (1805.55) **Stone, gravel and sand permits for public use.** The board may in its discretion, issue permits upon such terms and conditions it determines, to the department of highways, the board of county commissioners of any county of the state, or to the governing body of a city or town and of any other political subdivision of the state, granting them the right to take, remove, and use stone, gravel, or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance, and improvement of public roads, highways, bridges, streets, or alleys. The rights of lessees to the lands on which such stone, gravel, or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927; amd. Sec. 51, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the reference to the department of highways for a reference to the state highway commission; and made minor changes in style and phraseology.

CHAPTER 8—GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section

81-801. Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation.
81-802. Easements for school sites and grounds and other public uses.
81-803. Easements on state land—application for—action on.

81-801. (1805.56) **Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by the department of natural resources and conservation.** (1) Any state lands needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation, and reclamation works, or transmission or distribution of electric energy, shall, upon application to the board of land commissioners, be sold and

conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof, subject, however, to the approval of the state board of land commissioners and the price limitations of the Enabling Act and the state constitution.

(2) There is granted to the United States over all state lands an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph, and electric power lines now constructed or to be constructed by the United States in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water, and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. If the lands herein granted as rights of way cease to be used for that purpose, they shall revert to the state, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States apply to all lands sold to the United States under this section, but all prospecting and exploration for minerals therein, the mining and removal thereof, and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the previously specified purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(6) The provisions of this section governing the sale of state lands to the United States also apply to the sale of state lands for projects financed by the United States under the administration of the department of natural resources and conservation, except as to appraisal by the United States.

History: En. Sec. 56, Ch. 60, L. 1927; amd. Secs. 1, 2, 3 and 4, Ch. 37, Ex. L. 1933; amd. Sec. 1, Ch. 80, L. 1945; amd. Sec. 52, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "section" for "act" near the beginning of subsections (4) and (6); substituted "department of natural resources and conservation" for "state water conservation board" near the end of subsection (6); and made minor changes in phraseology.

81-802. (1805.57) **Easements for school sites and grounds and other public uses.** The board may grant easements in state lands for schoolhouse sites and grounds, for public parks, community buildings, cemeteries, and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of those properties.

History: En. Sec. 57, Ch. 60, L. 1927; amd. Sec. 6, Ch. 257, L. 1965; amd. Sec. 53, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style.

81-803. (1805.61) **Easements on state land—application for—action on.** (1) Application for an easement on state land must be made to the department of state lands. It shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement, and give any additional information the department requires. This application shall be accompanied by two (2) exact copies of the official plat of the proposed highway, street, or other easement duly verified by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty (40) acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that forty (40) acre tract or government lot. When deemed necessary by the department, these plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state. However, when the purpose of the right of way applied for is the transmission or distribution of electric energy, or the construction and operation of pipelines or telephone, telegraph or radio systems, the plats and measurements need not be given, except the description of the location of the center line of the right of way, and the entire right of way may be applied for in one application with only one plat of the entire right of way required. Easements granted under this section include permission to install and maintain poles, anchors, and other appurtenances necessary for the mechanical support of the transmission or distribution lines.

(2) Upon the filing of an application and plats, the department shall, whenever it considers it necessary, examine the proposed right of way and report its findings to the board. The board shall consider the application and report and take any action it considers proper, including the fixing of compensation and damages to be paid to the state. The compensation shall be the full market value of the estate or interest disposed of through the granting of the right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as they can be ascertained. If the right of way is granted according to the plat, the plat shall become the official plat thereof, and shall be retained in the office of the department. The board shall issue right of way deeds for all such easements that it grants, upon full payment being made.

(3) If the state land over or through which a right of way is applied for is under certificate of purchase or sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway, street, or other easement, and to the amount of compensation and damages to be paid, must be filed with the board before the right of way is granted. The board is the judge of how much compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much, if any, shall be paid to the purchaser, as the circumstances in each individual case warrant. This subsection applies to all grants of rights of way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; amd. Sec. 1, Ch. 108, L. 1939; amd. Sec. 1, Ch. 99, L. 1951; amd. Sec. 1, Ch. 203, L. 1953; amd. Sec. 1, Ch. 200, L. 1965; amd. Sec. 54, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department of state lands for references to the state board of land commissioners; substituted "section" for "provisions of this act" in the last sentence of subsection (1); substituted "examining proposed right of way" for "cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent" in the first sentence of subsection (2); substituted "issue right of way deeds for all such easements that it grants" for "cause right of way deeds to be issued for all such easements that it may hereafter grant" near the end of subsection (2); and made minor changes in style, punctuation and phraseology.

CHAPTER 9—SALE OF STATE LANDS

Section
81-901. Certain state lands not subject to sale.
81-902. Mineral reservations in state lands.
81-905. Surveying and platting left to discretion of board.
81-908. Who may purchase and how much.
81-910. Notice of sale.
81-912. Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.
81-915. Terms of payment.
81-917. Lien on improvements and crops for principal, interest.
81-919. Settlement for improvements.
81-921. Certificate of purchase.
81-923. Payments of installments.
81-924. Default in payment of purchase price—cancellation of certificate.
81-926. Certificates may be assigned.
81-927. Lost certificate.
81-928. Land subject to taxation.
81-930. Lands reverting to state—procedure.
81-932. Patents, how executed.

81-901. (1805.64) **Certain state lands not subject to sale.** Lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law. Lands which in the judgment of the board of land commissioners are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits, are not subject to sale, either the surface land or any of such deposits therein. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

History: En. Sec. 64, Ch. 60, L. 1927; amd. Sec. 55, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "gas" following "oil shale" in the second sentence; and made minor changes in style and phraseology.

81-902. (1805.65) **Mineral reservations in state lands.** All coal, oil, oil shale, gas, phosphate, sodium, and other mineral deposits, except sand, gravel, building stone, and brick clay, in state lands, which were not reserved by the United States before July 1, 1927, are reserved to the state. All those deposits are reserved from sale except upon a rental and royalty basis as provided by law. A purchaser of state lands acquires no right, title, or interest in or to any of those deposits. The state also reserves for itself and its lessees the right to enter upon these lands to prospect for, develop, mine, and remove those deposits and to occupy

and use so much of the surface of the lands as may be required for all purposes reasonably extending to the exploring for, mining, and removal of the deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

History: En. Sec. 65, Ch. 60, L. 1927; amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, Ch. 183, L. 1935; amd. Sec. 1, Ch. 184, L. 1961; amd. Sec. 56, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "state lands" for "lands belonging to the state of Montana, or which may hereafter become property of the state" in the first sentence; substituted "before July 1, 1927" in the first sentence for "already"; and made minor changes in style, phraseology and punctuation.

81-905. (1805.68) **Surveying and platting left to discretion of board.** It shall be entirely optional with the board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands within the limits of any town or city or within three (3) miles of such limits shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately at regular sales of state lands.

When such tracts of five (5) acres or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927; amd. Sec. 41, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "within the limits of any town or city or within three (3) miles of such limits" in the second sentence of the first paragraph for "of the fourth class as defined by section 1, article XVII, of the constitution"; and deleted "as provided by section 2, article XVII, of the constitution" after "sold alternately" in the second sentence of the first paragraph.

81-908. (1805.71) **Who may purchase and how much.** State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of eighteen (18) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands within a federal irrigation project wherein the Congress of the United States of America now or hereafter authorizes water to be furnished to an area exceeding one hundred and sixty (160) irrigable acres.

State lands may be sold to any sovereign state of the United States or to any board of trustees or public corporation or agency of such state created by such state as an agency or political subdivision thereof. Said lands may be purchased in the quantities set forth in this section for use by such state, board of trustees, public corporation, agency, or political subdivision for educational or scientific purposes.

The title to any state lands which have been heretofore purchased by a sovereign state or a board of trustees or public corporation, agency or political subdivision thereof qualified under the provisions of this act is hereby ratified and confirmed.

History: En. Sec. 71, Ch. 60, L. 1927; amd. Sec. 1, Ch. 95, L. 1949; amd. Sec. 1, Ch. 10, L. 1959; amd. Sec. 2, Ch. 184, L. 1961; amd. Sec. 19, Ch. 240, L. 1971; amd. Sec. 31, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the age specified at the end of the second sentence of the first paragraph from 21 to 19 years.

The 1973 amendment reduced the age specified at the end of the second sentence of the first paragraph from 19 to 18 years.

81-910. (1805.73) **Notice of sale.** (1) The department shall give notice of each sale by publication in a newspaper of general circulation in the county where the sale is to be held, once each week through the four (4) consecutive weeks preceding the date of sale. The notice shall give the day, date, and time of the beginning of the sale, and contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing them with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands, and the appraised value per acre and the appraised value of each lot. As a general rule nonirrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section.

(2) For the convenience of the bidders, the department may assign to the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

(3) The notice shall also give the terms and conditions of sale, and any additional information the department considers useful.

History: En. Sec. 73, Ch. 60, L. 1927; amd. Sec. 4, Ch. 184, L. 1961; amd. Sec. 57, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted references to the department for references to the commissioner; substituted "a newspaper of general circulation in" for "the official county paper" in the first sentence of subsection (1); and made minor changes in style, phraseology and punctuation.

81-912. (1805.75) **Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds.** (1) At the time fixed for the sale, the lands shall be offered for sale at auction in the order they appear in the notice of sale, and under the direction of the department the lands shall be sold to the highest qualified bidder under the following restrictions:

(a) No lands may be sold for less than the appraised value;

(b) Tillable lands capable of producing agricultural crops may not be sold for less than ten dollars ($10) per acre;

(c) Lands principally valuable for grazing purposes may not be sold for less than five dollars ($5) per acre.

(2) The lessee of the land need not make a higher bid than others, but he shall, if bidding an equal amount, be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

(3) If any successful bidder at a sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars ($50) nor more than one thousand dollars ($1000) to be determined by the board according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the department, the attorney general shall sue for the recovery thereof in the name of the state.

(4) The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927; amd. Sec. 1, Ch. 177, L. 1933; amd. Sec. 5, Ch. 184, L. 1961; amd. Sec. 58, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "direction of the department" for "personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale" near the end of the preliminary clause in subsection (1); substituted "department" for "commissioner" near the end of the second sentence in subsection (3); and made minor changes in style, phraseology and punctuation.

81-915. (1805.79) **Terms of payment.** (1) Every purchaser of state land shall pay on the day of sale that portion of the purchase price as he may desire, but in no case less than ten per cent (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars ($25), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars ($25).

(2) The balance of the purchase price shall draw interest at the rate of five per cent (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan. This plan is defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full. However, the amount of the last installment may vary from the other installments to the extent resulting from

disregarding fractional cents in the previous installments. The balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years, but the board may at any time fix a shorter period than twenty (20) years for the payment of the balance on town and city lots, and different periods of time may be established for different towns and cities as the best interests of the state demand.

History: En. Sec. 79, Ch. 60, L. 1927; amd. Sec. 1, Ch. 149, L. 1939; amd. Sec. 8, Ch. 257, L. 1965; amd. Sec. 10, Ch. 22, L. 1971; amd. Sec. 59, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the fee of $5.00 for issuance of certificate of purchase, and granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners.

The 1973 amendment numbered the subsections; deleted "he shall also in all cases pay such fee as may be prescribed by the commissioner of state lands and investments with the approval of the state board of land commissioners for each certificate of purchase to be issued to him" from the end of subsection (1); and made minor changes in style and phraseology.

81-916. (1805.80) **Repealed.**

Repeal

Section 81-916 (Sec. 80, Ch. 60, L. 1927), relating to conversion of certificates of purchase issued prior to February 13, 1923, to amortization certificates, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-917. (1805.81) **Lien on improvements and crops for principal, interest.** The state has a lien prior and superior to all other liens, except threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which have priority, but only for the aggregate amount of the indebtedness then existing, including any advances theretofore made, interest due and other charges as evidenced by the original loan-contract, and indebtedness thereafter accumulating on such basis, exclusive of any other future advances originally contemplated. This lien is upon all buildings, structures, fences, and all other improvements upon the lands so sold and upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and this lien is hereby expressly reserved. Any person purchasing or otherwise acquiring the improvements or crops or any part thereof, takes them subject to the lien. Any representative of the department or sheriff of the county in which the land is located, or his deputy, may demand of the purchaser or his agent payment of the amounts due the state, and if they are not paid upon demand, the officer making the demand, or any representative of the department, may immediately seize the improvements and crops, and upon giving three (3) days' notice, sell and dispose of, either at private or public sale, sufficient of the crops or improvements or of both to pay the amounts due the state, together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927; amd. Sec. 60, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted the latter part of the first sentence, beginning "but only for the aggregate," for "as specified in section 52-301"; and made minor changes in style, phraseology and punctuation.

81-919. (1805.83) **Settlement for improvements.** If any state land is sold on which there are improvements belonging to a lessee, and some person other than the lessee is the purchaser, that person shall settle with the lessee for all improvements on the land belonging to the lessee before the issuance of the certificate of purchase. The provisions of sections 81-421 and 81-421.1 relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee apply to the settlement between a lessee and the purchaser. If settlement is not reached within six (6) months of date of sale, all improvements become the property of the state unless the department for good cause shown grants both parties additional time in which to exhaust arbitration.

History: En. Sec. 83, Ch. 60, L. 1927; amd. Sec. 9, Ch. 257, L. 1965; amd. Sec. 61, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "The provisions of sections 81-421 and 81-421.1" for "All provisions of this act" at the beginning of the second sentence; substituted "department" for "commissioner" near the end of the section; and made minor changes in style and phraseology.

81-921. (1805.85) **Certificate of purchase.** (1) Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the department shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the board and by the commissioner of state lands and attested by the seal of the board. The certificate of purchase shall contain the date of sale, the name and post-office address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid, and the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights of way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in section 81-902 relating to coal, oil, and mineral rights in the land.

(2) The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes, and any additional conditions, agreements, and information the board considers necessary in order to carry out the intent of this act.

History: En. Sec. 85, Ch. 60, L. 1927; amd. Sec. 62, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for "commissioner" in the first sentence of subsection (1); substituted "commissioner of state lands" for "commissioner acting as secretary of the board" near the end of the first sentence in subsection (1); substituted "section 81-902" for "in this act" near the end of subsection (1); and made minor changes in style and phraseology.

81-923. (1805.87) **Payments of installments.** The department is not required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one (1) or more installments before the same becomes due, but unless such payments are made at least six (6) months before the installments become due, no

reduction may be made in the interest payments. If installments on principal and interest are paid more than six (6) months prior to the due date, the interest from the date of such payment shall be figured upon the balance of the principal unpaid after the advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, the total of that installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per cent (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927; amd. Sec. 63, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department" for "commissioner" at the beginning of the first sentence; and made minor changes in style and phraseology.

81-924. (1805.88) **Default in payment of purchase price—cancellation of certificate.** If any purchaser or assignee of state land defaults for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate is subject to cancellation. The department shall mail to him at his last known post-office address a notice of default and pending cancellation. The notice shall give him sixty (60) additional days from the date of mailing the notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make the payment within sixty (60) days, the certificate of purchase shall from that date and without further notice be void, the duplicate of the certificate in the office of the department shall be canceled, and the land under the certificate shall revert to and become the property of the state to the same extent as other state lands, and shall be open to lease and sale. All buildings, fences, and other improvements placed thereon subsequent to the date of execution of the certificate of purchase shall be and remain the property of the purchaser named in the certificate of purchase or of his heirs, assigns, or devisees, and may be removed from the land at any time within ninety (90) days after the date of the cancellation. If the buildings, fences, and other improvements are not removed prior to the expiration of the ninety (90) day period, they become the property of the state. In case of cancellation of certificate of purchase or surrender of certificate of purchase, and where the land is again open to lease, the former lessee has the prior right to lease the tract at the existing rate, or at the rate set by competitive bidding if such occurs.

History: En. Sec. 88, Ch. 60, L. 1927; amd. Sec. 4, Ch. 141, L. 1939; amd. Sec. 1, Ch. 159, L. 1951; amd. Sec. 64, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "or assignee" near the beginning of the first sentence; substituted references to the department for references to the board and the commissioner; and made minor changes in style and phraseology.

81-926. (1805.90) **Certificates may be assigned.** Certificates of purchase may be assigned to a citizen of the United States, or to a person

who has declared his intention to become a citizen, or to a corporation organized under the laws of this state. Such assignments shall be made on forms prescribed by the department, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the department, and one (1) copy to be retained by the assignee. A person is not qualified to receive an assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927; amd. Sec. 65, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

81-927. (1805.91) **Lost certificate.** If a certificate of purchase to state lands is lost or is wrongfully withheld by any person from the owner thereof, the rightful owner may apply to the board for the issuance of a substitute certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate, and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall issue a substitute certificate of purchase to the applicant if in the judgment of the board the facts warrant its issue.

History: En. Sec. 91, Ch. 60, L. 1927; amd. Sec. 66, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "substitute certificate" for "lieu certificate" in two places; and made minor changes in style and phraseology.

81-928. (1805.92) **Land subject to taxation.** (1) State lands purchased from the state are subject to taxation to the full value thereof. The department of revenue shall assess the purchaser for the full value of the land on the first Monday of March following the date of purchase. The holder of certificates of purchase to lands within irrigation districts is liable for the entire tax levied against the land thereunder on account of such irrigation district.

(2) The improvements on the land shall be assessed and taxed as other improvements on farm lands.

(3) On or before March 15 of each year, the department shall furnish the department of revenue or its agent in each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of each year. This list shall show the name and address of the purchaser, the legal description of the land, and the acreage contained therein.

History: En. Sec. 92, Ch. 60, L. 1927; amd. Sec. 1, Ch. 107, L. 1953; amd. Sec. 52, Ch. 391, L. 1973; amd. Sec. 67, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned or in-

corporated the changes made by the other. Since the amendments do not conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in the second sentence of what is now subsection (1); and substituted "department of revenue or its agent in" for "county assessor of" in the first sentence of what is now subsection (3); both to implement article VII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, numbered the subsections; substituted "department" for "commissioner" in the first sentence of subsection (3); and made minor changes in style, phraseology and punctuation.

81-930. (1805.94) **Lands reverting to state—procedure.** If any lands sold under this title revert to the state for any reason, the department shall notify the department of revenue and the county treasurer of the county in which the land is situated of that fact. Upon the receipt of the notice, the department of revenue shall cancel any assessment of the land for that year, and the county treasurer shall cancel all tax liens against the land.

History: En. Sec. 94, Ch. 60, L. 1927; amd. Sec. 53, Ch. 391, L. 1973; amd. Sec. 68, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue" for "assessor" in two places in order to implement article VII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "title" for "act" near the beginning of the first sentence; substituted "department" for "commissioner of state lands" in the middle of the first sentence; substituted "tax liens" for "taxes remaining unpaid" near the end of the section; deleted "for that and all previous years" from the end of the section; and made minor changes in style, phraseology and punctuation.

81-932. (1805.96) **Patents, how executed.** (1) The governor, and in his absence or inability, the lieutenant governor, shall execute deeds or patents of conveyance transferring without covenants any lands sold by the board under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, reservation of all minerals in the land as provided in section 81-902, and all other reservations to which the particular land conveyed is subject. If the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." The deed or patent shall be attested by the secretary of state, countersigned by the commissioner of state lands, and have the great seal of the state and the seal of the board thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

(2) This section does not require any reservation in a patent which was not an express or implied reservation in the certificate of purchase

pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927; amd. Sec. 69, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "section 81-902" for "this act" near the end of the second sentence of subsection (1); and made minor changes in style and phraseology.

81-934 to 81-942. Repealed.

Repeal

Sections 81-934 to 81-942 (Secs. 1 to 3, Ch. 106, L. 1945; Secs. 1 to 6, Ch. 196, L. 1947), relating to certain contracts executed between 1923 and 1928, and authorizing the sale of a specific tract of land, were repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 10—INVESTMENTS

81-1001 to 81-1007.1, 81-1008. (930, 1805.98 to 1805.105) Repealed.

Repeal

Sections 81-1001 to 81-1007.1, 81-1008 (Sec. 2, Ch. 47, L. 1903; Sec. 1, Ch. 11, L. 1921; Secs. 98 to 105, Ch. 60, L. 1927; Sec. 1, Ch. 26, L. 1931; Sec. 2, Ch. 139, L. 1933; Secs. 224, 225, Ch. 147, L. 1963; Sec. 31, Ch. 234, L. 1971; Sec. 1, Ch. 1, 2nd Ex. L. 1971; Sec. 42, Ch. 100, L. 1973), relating to investment of funds of the institutional permanent funds, were repealed by Sec. 9, Ch. 298, Laws 1973. For new law, see secs. 79-308 to 79-311.

CHAPTER 11—STATE LANDS AND INVESTMENTS—MISCELLANEOUS PROVISIONS

Section

81-1101. Acceptance of federal land grants.
81-1101.1. Board may accept federal facilities and installations—title in state.
81-1102. Gifts, donations, grants, legacies and devises to the state.
81-1103. Donations of land for forestry purposes.
81-1108, 81-1109. [Transferred].
81-1110. Who may not buy or lease state lands.
81-1113. [Transferred].
81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue.
81-1116. Computation of state land equalization payment.
81-1117. Form to be completed by department of revenue—method of computation shown.
81-1118. County statement on equalization payments examined by department—claim filed with department of administration.
81-1119. Warrant for state land equalization payments to counties.
81-1120. County distribution of state land equalization payments.
81-1121. School district use of state land equalization proceeds.
81-1122. Reports by state treasurer.

81-1101. (1805.113) **Acceptance of federal land grants.** The state board of land commissioners may accept any grant of lands from the United States to the state made in carrying out the provisions of the Enabling Act and also any other grant for any special purpose that may be made by the United States to the state. Any acceptance by the board on behalf of the state, that has taken place prior to July 1, 1927, of lands granted by the United States to the state is hereby ratified.

History: En. Sec. 113, Ch. 60, L. 1927; amd. Sec. 70, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "The federal land grants made to the state of Montana through the so-called Enabling Act have already been accepted as a whole through the adoption of the state constitution and specifically by subdivision 7 of ordinance No. 1 thereof" from the beginning of the first sentence; substituted

"July 1, 1927" for "this act" in the second sentence; deleted "confirmed and approved" from the end of the section; and made minor changes in style and phraseology.

81-1101.1. Board may accept federal facilities and installations—title in state. The board may on behalf of the state accept donations of federal installations, facilities, lands, or properties. All title to the installations or facilities shall be vested in the name of the state for its use. This section does not limit, reduce, or supersede sections 82-3101 through 82-3104.

History: En. Sec. 1, Ch. 252, L. 1965; amd. Sec. 71, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "board" for "state board of examiners" at the beginning of the section; and made minor changes in style and phraseology.

81-1102. (1805.114) **Gifts, donations, grants, legacies and devises to the state.** The state board of land commissioners is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars ($250.00) from each person. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927; amd. Sec. 43, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "for any purpose authorized by article XXI of the constitution" from the end of the first sentence; and deleted "as provided by article XXI of the constitution" after "they were received" in the latter part of the third sentence.

81-1103. Donations of land for forestry purposes. The board may accept gifts, donations, or contributions of land suitable for forestry or park purposes, and enter into agreements with the federal government or other agencies for acquiring by lease, purchase, or otherwise such lands as in the judgment of the board are desirable for state forests.

History; En. Sec. 1, Ch. 159, L. 1937; amd. Sec. 72, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in phraseology and punctuation.

81-1108, 81-1109. [Transferred.]

Compiler's Notes

Sections 73 and 74 of Ch. 428, Laws 1973, redesignated these sections as secs. 81-106 and 81-107.

81-1110. (1805.117) **Who may not buy or lease state lands.** It is unlawful for any member of the board, or any person appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the department of state lands as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927; amd. Sec. 75, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department of state lands" for "state land office" near the end of the section; and made minor changes in phraseology.

81-1113. [Transferred.]

Compiler's Notes

Section 76 of Ch. 428, Laws 1973, redesignated this section as sec. 81-108.

81-1115. State land equalization payments to counties—list of lands transmitted to department of revenue. The department shall, before the first Monday of April of every year, prepare and transmit a statement to the department of revenue or its agent in each county in which the state has real property in excess of six per cent (6%) of the total land area of the county and from which the state derives grazing, agricultural or forest income. The statement shall contain the total number of acres owned by the state in that county and list the acres separately as grazing, agricultural, or forest land.

History: En. Sec. 1, Ch. 235, L. 1967; amd. Sec. 54, Ch. 391, L. 1973; amd. Sec. 77, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Title of Act

An act providing for reimbursement to counties for loss of revenue because of tax exempt status of state owned land in excess of six per cent (6%) of the total land area; providing for procedures to effectuate this purpose; prescribing the duties of the commissioner of state lands and investments, county assessors and the state controller; limiting the maximum payments; and providing an effective date.

Amendments

Chapter 391, Laws of 1973, substituted "department of revenue or its agent in" for "county assessor of" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted "department" for "commissioner of state lands and investments for the state of Montana" at the beginning of the first sentence; and made minor changes in style, phraseology and punctuation.

81-1116. Computation of state land equalization payment. The department of revenue shall compute the amount of taxes which would be payable on the county assessments of said property as if it were owned by, and taxable to, a taxpayer of such county; provided that, if the land is not classified, the sum to be listed shall be determined by the average tax payment made on like property within the county where said land is situated, not to exceed twelve cents ($.12) per grazing acre, thirty-five cents ($.35) per agricultural acre, and twelve cents ($.12)

per forest acre. The average tax may be derived from the most recent biennial report of the state department of revenue. The total figure arrived at by this method shall be called the gross assessment figure. The county exemption factor shall be determined by dividing the percentage the state owned land bears to the total land area of the county into six per cent (6%). This quotient shall be multiplied by the gross assessment figure and the product is called the state exemption figure. The state exemption figure shall be subtracted from the gross assessment to give the state land equalization payment.

History: En. Sec. 2, Ch, 235, L. 1967; amd. Sec. 55, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

81-1117. Form to be completed by department of revenue—method of computation shown. The department shall provide a form to be followed and completed by the agent of the department of revenue in each county. The agent shall, before October 1, make the computations required and submit to the department the completed form which shall show the computations and method used in arriving at the state land equalization payment.

History: En. Sec. 3, Ch. 235, L. 1967; amd. Sec. 56, Ch. 391, L. 1973; amd. Sec. 78, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue in each county" for "county assessor" at the end of the first sentence; and substituted "agent" for "county assessor" at the beginning of the second sentence; both to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments; and made minor changes in style and phraseology.

81-1118. County statement on equalization payments examined by department—claim filed with department of administration. The department shall examine the statement returned by the agent of the department of revenue for accuracy, and in no case shall the state land equalization payment be approved unless the state exemption figure is deducted from the gross assessment figure in the statement. The department shall, before November 1 of each year, prepare and file a claim with the department of administration for all counties who are eligible for state land equalization payments, and this claim shall show the amount of money each eligible county will receive.

History: En. Sec. 4, Ch. 235, L. 1967; amd. Sec. 57, Ch. 391, L. 1973; amd. Sec. 79, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 391 and once by Ch. 428. Neither amendatory enactment mentioned or incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 391, Laws of 1973, substituted "agent of the department of revenue" for "county assessor" in the first sentence in order to implement article VIII, section 3 of the 1972 constitution.

Chapter 428, Laws of 1973, substituted references to the department for references to the commissioner of state lands and investments at the beginning of the first and second sentences; substituted "department of administration" for "state controller" in the middle of the second sentence; and made minor changes in style and phraseology.

81-1119. Warrant for state land equalization payments to counties. The department of administration shall, before December 1, approve and authorize the issuance of a warrant on the general fund of the state made payable to the county treasurer of the counties shown on the claim for the payment of the state land equalization payment.

History: En. Sec. 5, Ch. 235, L. 1967; amd. Sec. 80, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department of administration" for "state controller" at the beginning of the section; and made minor changes in style and phraseology.

81-1120. County distribution of state land equalization payments. The county treasurer shall distribute the money received under this act within their county as hereinafter provided; sixty per cent (60%) of total payment shall be broken down into cents per acre of total state owned land within the county, and apportioned between the elementary school districts in accordance with the amount of state owned land in each elementary district. Forty per cent (40%) shall be allotted to the county road fund.

History: En. Sec. 6, Ch. 235, L. 1967.

81-1121. School district use of state land equalization proceeds. The money received by any school district under sections 81-1115 through 81-1120 shall be designated as district money for the general maintenance and operation of the elementary schools of the district. Such money may be used by the district as all other cash balances are used, in accordance with the provisions of section 75-6915.

History: En. Sec. 7, Ch. 235, L. 1967; amd. Sec. 81, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "sections 81-1115 through 81-1120" for "this act" in the first sentence; and substituted the reference to section 75-6915 for a reference to section 75-3618 at the end of the section.

Effective Date

Section 8 of Ch. 235, Laws 1967 read "This act is effective January 1, 1968."

81-1122. (1805.9) **Reports by state treasurer.** On or before the tenth day of each calendar month, the state treasurer shall report to the department the amount of money received by him during the preceding month from each source, except from the department, for each income fund and each permanent fund arising from a federal land grant or otherwise under the control of the board, the amount paid out from each income fund or permanent fund during the month and the object of such payment, and the balance uninvested in each fund. These reports shall be on such forms and contain such additional information the department prescribes and the board approves.

History: En. Sec. 9, Ch. 60, L. 1927; Sec. 81-205, R. C. M. 1947; redes. 81-1122 and am i. by Sec. 6, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section; substituted references to the department for references to the commissioner; and made minor changes in style and phraseology.

CHAPTER 13—REIMBURSEMENT OF FEDERAL GOVERNMENT FOR CERTAIN EMERGENCY CONSERVATION WORK

(Repealed—Section 116, Chapter 428, Laws of 1973)

81-1301. (1808.1) **Repealed.**

Repeal

Section 81-1301 (Sec. 1, Ch. 158, L. 1935), relating to reimbursement of the federal government for emergency conservation work resulting in profit to the state, was repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 14—STATE FORESTS—FORESTER—TIMBER SALES—FIREWARDENS

Section
81-1403. State forester—appointment—compensation—term—assistants.
81-1411. Duties of state forester.

81-1403. (1830.3) **State forester—appointment—compensation—term—assistants.** The governor, by and with the advice and consent of the senate, shall appoint a state forester to have general charge of all the state's forest. He shall be technically trained and experienced in forestry and a graduate of an accredited forestry school, and his salary shall be in such amount as may be specified by the legislative assembly in the appropriation to the state forester, together with the actual, necessary expenses while engaged in outside work in connection with his office and its duties as defined by law and the regulations of the state board of land commissioners and the state board of forestry. If the legislative assembly does not specify the maximum salary of the state forester, his salary shall be fixed by the state board of forestry after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. Such expenses shall be payable monthly from the state's general fund and/or the appropriations made to those other boards to which he, by law, has been designated secretary or executive officer. His term of office shall be for four (4) years. With the consent and approval of the state board of land commissioners the state forester shall appoint and fix the salaries and expenses of such office help, district foresters, firewardens, cruisers, scalers, slash disposal men, and such other trained and qualified assistants as may be necessary in the administration of the state forests and the forested lands within the state. Provided, however, that consent and approval of such appointments by any board shall be restricted to those appointments made for the purposes of that board as defined by law.

History: En. Sec. 3, Ch. 179, L. 1925; amd. Sec. 1, Ch. 161, L. 1949; amd. Sec. 1, Ch. 192, L. 1953; amd. Sec. 1, Ch. 28, L. 1955; amd. Sec. 1, Ch. 94, L. 1957; amd. Sec. 5, Ch. 225, L. 1963; amd. Sec. 39, Ch. 177, L. 1965; amd. Sec. 9, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "be in such amount as may be specified by the legislative assembly in the appropriation to the state forester" for "not be more than ten thousand eighty dollars ($10,080) per annum, at the discretion of the state land board" after "his salary shall" in the second sentence; and inserted the third and fourth sentences.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

Forester's position abolished and functions transferred, sec. 82A-1505(3).

81-1411. (1831) **Duties of state forester.** The state forester shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timberlands of the state. He shall act as secretary of the forestry board. He shall, under the supervision of the state board of land commissioners, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush and grass fires; enforce the laws pertaining to forest and brushcover lands, and prosecute for any violation of such laws. He shall report as provided in section 2 [82-4002] of this act. He shall furnish notices, printing in large letters, calling attention to the danger from forest fires, and to the forest fire and trespass laws, and their penalties. Such notices shall be posted by the firewarden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region.

History: En. Sec. 10, Ch. 147, L. 1909; amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 1831, R. C. M. 1921; amd. Sec. 1, Ch. 218, L. 1955; amd. Sec. 34, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted reporting requirements of section 82-4002 for former provision requiring annual reports in the fourth sentence.

CHAPTER 15—PORTABLE SAWMILLS ON FOREST LAND—LICENSE AND REGULATION

81-1501. (1839.1) **Portable sawmill license required.**

Cross-References

Forester's position abolished and functions transferred, sec. 82A-1505 (3).

CHAPTER 16—TIMBER SALES—GENERAL PROVISIONS

Section
81-1601. Sale of timber—fees for brush disposal and timber stand improvement.
81-1604. State brand—penalty for violation.

81-1601. (1872) **Sale of timber—fees for brush disposal and timber stand improvement.** (1) The state board of land commissioners may sell timber on state lands, at such price per thousand feet as in its judgment is in the best interest of the state, but not otherwise; but no such sale of live timber shall be less than three dollars ($3) per thousand feet for white pine, yellow pine, and spruce or less than one dollar and a half ($1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the board prescribes; in all cases the board must require the person cutting the

timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale is granted, the timber shall be estimated and appraised under the direction of the department of natural resources and conservation, upon the request and subject to the approval of the board. These estimates and appraisals shall show as nearly as possible the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

(2) The board may set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall be deposited in the earmarked revenue fund to the credit of the department of natural resources and conservation.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1933; amd. Sec. 219, Ch. 147, L. 1963; amd. Sec. 82, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department of natural resources and conservation" for "state forester" in the third sentence of subsection (1) and at the end of subsection (2); and made minor changes in style and phraseology.

81-1604. (1881) **State brand—penalty for violation.** The department of natural resources and conservation, under the direction of the board, shall select and designate a brand which it shall place upon all timber, logs, boards, or planks that may be seized, as provided for in this chapter. Any person, or any officer or employee of any company, association, or corporation, who removes, sells, or disposes of any property mentioned in this chapter, after the property has been seized or marked with the state brand, or who erases, defaces, cuts, or destroys any mark upon any such property, shall, upon conviction, be imprisoned in the state prison for not less than one (1) year nor more than three (3) years, and be subject to a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000).

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R. C. M. 1921; amd. Sec. 83, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "state forester" at the beginning of the section; and made minor changes in style and phraseology.

CHAPTER 17—OIL AND GAS ON STATE LANDS—DISPOSAL OF

Section
81-1702. Area to be leased—limitations—term of leases—operating agreements.
81-1702.1. Rentals—filing fee—contiguity.
81-1702.2. Power to terminate lease—grounds.
81-1705. Report of lessees.
81-1706. Work required to hold lease—extension of time—modification of existing leases.
81-1712. Disposition of royalties and other moneys.
81-1716. Assignments of leases.
81-1717. Removal of property of lessee at end of term—agreement with new lessee concerning property.
81-1718. Surrender of lease.
81-1720. State officers not to be interested in leases.

81-1726. Term of lease—renewal.
81-1728. Bond of lessees.
81-1729. Cancellation and forfeiture of lease—notice—hearings.
81-1730. Rentals—disposition of funds.
81-1731. Termination and surrender of lease.

81-1702. (1882.2) **Area to be leased—limitations—term of leases—operating agreements.** (1) An oil or gas lease issued on state lands may not embrace more than six hundred forty (640) acres, except that any section surveyed by the United States which contains more than six hundred forty (640) acres may be included under one (1) lease. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the board or take through assignment, or succession, will, judgment, decree, or otherwise through the operation of law, more than one (1) oil and gas lease to state lands, subject to such regulations and limitations as the board prescribes.

(2) All state oil and gas leases shall be granted for a primary term or period of ten (10) years, and as long thereafter as oil or gas in paying quantities is produced, on condition that all drilling, rental, and other obligations are fully kept and performed by the lessee; nothing in this section amends or repeals sections 81-1703 or 81-1706.

If oil or gas is not being produced from the leased premises at the expiration of the primary term of the lease, but the owner of the lease is then engaged in drilling on the premises for oil or gas, then the lease continues in force so long as such drilling operations are being diligently prosecuted. If oil or gas is recovered from any such well drilled or being drilled at or after the expiration of the primary term of the lease, the lease continues in force so long as oil or gas in paying quantities is produced from the leased premises.

(3) Owners of state oil and gas leases may enter into agreements with other persons, associations, firms, and corporations for drilling and other operations on the state lands under their leases; but no such operating agreements are in any way binding upon the state until filed with the board and approved by it; and no such drilling or operating agreement in any way affects the obligations of each individual leaseholder to the state.

(4) Nothing contained in this section or in prior related acts prevents the board from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and from modifying leases with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements and such unit plans of operation; however, such agreements may not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases. The board may modify existing pooling and unit agreements so as to commit the state lands included therein for as long as the unitized substance or substances for which the state lands are committed is produced from any lands in the unit.

(5) Oil or gas produced from any part of a unit in which state lands are included by virtue of a pooling agreement, are considered to be produced from the state lands therein, within the meaning of this chapter.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945; amd. Sec. 1, Ch. 122, L. 1953; amd. Sec. 84, Ch. 428, L. 1973.

Compiler's Notes

Section 81-1703, cited at the end of the first paragraph of subsection (2), was repealed by Sec. 116, Ch. 428, Laws 1973.

Amendments

The 1973 amendment inserted "state oil and gas" at the beginning of subsection (2); and made minor changes in style, phraseology and punctuation.

81-1702.1. Rentals—filing fee—contiguity. (1) The minimum annual money rentals to be paid to the state for oil and gas leases issued before March 3, 1955, shall be seventy-five cents ($.75) for each acre of land leased; however, this rental shall in no case be less than fifty dollars ($50) a year.

(2) The annual money rentals to be paid to the state for oil and gas leases issued on and after March 3, 1955, shall be one dollar ($1) for each acre of land leased, except that in addition to the sum of one dollar ($1) per acre, the rental for the first year of the lease shall also include any sum in excess of one dollar ($1) per acre offered and accepted for the first year's rental; however, this rental shall in no case be less than fifty dollars ($50) a year.

(3) The first year's rental shall be paid before the issuance of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year, and upon failure to make such payment the lease terminates.

(4) The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease may embrace noncontiguous subdivisions of lands unless the subdivisions are within an area comprising not more than one (1) square mile.

(5) In all cases where an oil and gas lease issued after March 3, 1955, is surrendered for cancellation before its expiration, relinquished to the state, or canceled through proceedings on the part of the state, no new lease on the lands under such lease may be issued within thirty (30) days from the date of cancellation or relinquishing. This restriction does not apply, however, in cases of bona fide assignment.

History: En. Sec. 1, Ch. 161, L. 1955; amd. Sec. 12, Ch. 22, L. 1971; amd. Sec. 85, Ch. 428, L. 1973.

Amendments

The 1971 amendment deleted the filing fee of $5.00 for each oil and gas lease issued from the second paragraph; granted general authority for the commissioner of lands and investments to prescribe such fee with the approval of the board of land commissioners; and made a minor change in style.

The 1973 amendment inserted subsection (1); numbered the remaining subsections; substituted "issued on and after March 3, 1955" for "hereafter made under the provisions chapter 17 of Title 81, R. C. M. 1947, and acts amendatory thereto" in subsection (2); deleted from subsection (3) a first sentence providing for filing fees on issuance and assignment of leases; deleted "Such filing fee and" from the beginning of the first sentence of subsection (3); substituted "issued after March 3, 1955, is surrendered" for "hereafter issued shall be surrendered" near the beginning of subsection (5); and made minor changes in style and phraseology.

81-1702.2. Power to terminate lease—grounds. In every oil and gas lease granted after March 3, 1955, under this chapter there shall be reserved to the board full power to declare termination of the lease at the end of

the second year or any subsequent year of the primary term of the lease upon failure of the lessee to either (a) commence the drilling of a well for oil and gas upon the leased premises or (b) pay a delay drilling penalty as follows: for the sixth year of the lease one dollar and twenty-five cents ($1.25) per acre per year, and for the remainder of the primary term of the lease an amount per acre per year as the board may, in its discretion, determine. Notice of that determination shall be given to the lessee, and if the lessee applies for a hearing thereon within ten (10) days after receipt of the notice, the determination shall become final only after such hearing has been held. This annual delay drilling penalty shall be paid each year in advance. If a well for oil and gas is commenced, the drilling of the well shall be prosecuted with due diligence and dispatch to such depth as is necessary to make a reasonable test for oil or gas. If the first well drilled is a dry hole, and if a second well is not commenced on the land covered by the lease before the next anniversary of the lease following the completion of the well, the lease may be terminated by the board unless the lessee, on or before such anniversary, resumes the payments of penalties in the amounts provided in this section. Upon the resumption of the payment of such delay drilling penalties and their continued payment, the lease continues in force during the primary term as though there had been no interruption in the delay drilling penalty payments.

History: En. Sec. 2, Ch. 161, L. 1955; amd. Sec. 1, Ch. 251, L. 1965; amd. Sec. 86, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "granted after March 3, 1955" for "hereafter granted" near the beginning of the section; and made minor changes in style and phraseology.

81-1702.3. Repealed.

Repeal

Section 81-1702.3 (Sec. 3, Ch. 161, L. 1955), exempting subsequent leases from secs. 81-1703 and 81-1706, was repealed by Sec. 116, Ch. 428, Laws 1973. For present law, see sec. 81-1706 (2).

81-1702.4. Repealed.

Repeal

Section 81-1702.4 (L. 1965, Ch. 251, Sec. 2), relating to reservation of royalties to state in oil and gas leases granted by state, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

81-1703. (1882.3) Repealed.

Repeal

Section 81-1703 (Sec. 3, Ch. 108, L. 1927; Sec. 13, Ch. 22, L. 1971), relating to rentals, filing fees, contiguity of land leased and cancellation and renewal of leases, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1705. (1882.5) **Report of lessees.** On or before the last day of each month every holder of a producing oil or gas lease shall make a report to the department for the preceding calendar month on a form the department prescribes. The report shall show the amount of oil or gas produced and saved during the preceding month, the price obtained, the total amount of all sales, and any additional information as may be required, and it shall be signed by the lessee or some responsible person having knowledge thereof. The report shall be accompanied by payment of the amount due

the state as royalty for the month covered by the report, unless the state's royalty is being or has been paid direct by the purchaser thereof; however, where the amount of royalty due from any lease is determined by the board to be so small as to make it uneconomical to collect monthly, the board may authorize royalty payments to be made semiannually.

History: En. Sec. 5, Ch. 108, L. 1927; amd. Sec. 2, Ch. 122, L. 1953; amd. Sec. 1, Ch. 171, L. 1963; amd. Sec. 87, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to the department for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-1706. (1882.6) **Work required to hold lease—extension of time—modification of existing leases.** (1) In every oil and gas lease granted by the state there shall be reserved to the board full power to declare termination of the lease upon failure of the lessee to drill at last one well upon the leased premises (not less than six (6) inches in diameter to the depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth) within two (2) years after the date of the lease. If oil or gas in commercial quantities is not found at the depth of one thousand (1,000) feet or less, the lessee shall continue drilling with diligence to such depth as necessary to make reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for the commencement or completion of such drilling obligation from year to year, not exceeding ten (10) years after the date of the lease, upon such terms and considerations the board determines, and upon payment to the department of such penalty, if any, the board in its discretion determines, for each year beginning with the third year, payable each year in advance.

(2) This section does not apply to leases issued after March 2, 1955.

History: En. Sec. 6, Ch. 108, L. 1927; amd. Sec. 2, Ch. 171, L. 1933; amd. Sec. 88, Ch. 428, L. 1973.

Amendments

The 1973 amendment designated the first paragraph as subsection (1); substituted references to the department for references to the commissioner of state lands and investments; deleted a second paragraph permitting modification of pre-existing leases; added subsection (2); and made numerous minor changes in style, phraseology and punctuation.

81-1709. (1882.9) **Repealed.**

Repeal

Section 81-1709 (Sec. 9, Ch. 108, L. 1927; Sec. 1, Ch. 186, L. 1957), relating to bonds of lessees of state oil and gas leases, was repealed by Sec. 1, Ch. 164, Laws 1969.

81-1712. (1882.12) **Disposition of royalties and other moneys.** All fees, rentals, penalties, royalties, and bonuses collected for or under state oil and gas leases shall be paid to the department and credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof. However, all royalties and bonuses collected from the lands forming part of the capitol building grant

shall be available as income the same as all other receipts from such lands. All moneys received as rentals, royalties, and bonuses for or under leases on state lands and not held in trust for the public schools of the state, or for any state institution, shall be credited, one-half (½) to the state general fund and one-half (½) to the state permanent revenue fund.

History: En. Sec. 12, Ch. 108, L. 1927; amd. Sec. 44, Ch. 100, L. 1973; amd. Sec. 89, Ch. 428, L. 1973.

Amendments

Chapter 100, Laws of 1973, deleted "as defined by article XXI of the constitution" from the end of the section.

Chapter 428, Laws of 1973, made the same deletion as did Ch. 100; substituted "department" for "register of state lands" near the beginning of the first sentence; and made changes in phraseology, style and punctuation.

81-1713, 81-1714. (1882.13, 1882.14) **Repealed.**

Repeal

Sections 81-1713, 81-1714 (Secs. 13, 14, Ch. 108, L. 1927), accepting an amendment to the Enabling Act, and relating to the correction of errors, were repealed by Sec. 116, Ch. 428, Laws 1973.

81-1716. (1882.16) **Assignments of leases.** The assignment of any oil and gas lease issued under this chapter, either in whole or as to subdivisions of land embracing not less than forty (40) acres covered thereby, made to an assignee qualified as provided herein, is permitted. Such assignment is not, however, binding upon the state until filed with the department and accompanied by the required fees, together with such proof of qualifications required by the board, and approved by the board or its lawful representative. The approval of any assignment so filed and supported may not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases is subject to appeal upon proper court proceedings. All other assignments of oil and gas leases issued under this chapter or interests therein are subject to approval by the board and are binding upon the state in the discretion of the board.

History: En. Sec. 16, Ch. 108, L. 1927; amd. Sec. 90, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "filed with the department" for "filed in the office of the register of state lands" in the second sentence; deleted "and bond" following "required fees" in the second sentence; and made minor changes in style and phraseology.

81-1717. (1882.17) **Removal of property of lessee at end of term—agreement with new lessee concerning property.** (1) Upon the termination for any cause of any lease issued under this chapter, the former lessee has six (6) months after the date of the termination to remove all machinery, fixtures, improvements, buildings and equipment belonging to him on the premises, except for casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells. As to such casing, equipment, and apparatus, any succeeding lessee, or in the event there is no succeeding lessee, the state, wishing to have such property left upon the premises, shall pay the reasonable value thereof to the former lessee. If the succeeding lessee or the board is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment, and

apparatus, the succeeding lessee or the state, as the case may be, shall pay in cash to the former lessee a sum fixed as a reasonable price by a board of three (3) appraisers, one (1) of whom shall be chosen by the successful bidder, one (1) by the former lessee, and the third by the two (2) so chosen. Its appraisal shall be reported to the respective parties in writing, and is final and conclusive.

(2) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of the casing, equipment, and apparatus which the succeeding lessee or the state desires to have left upon the premises, is fixed, in the manner provided in this section, and has been paid to him in cash. During the time the former lessee remains in such possession, he may retain the same share of the products of the premises as inured to him during the term of his lease. Should the state or other bidder not desire any of the lessee's property as provided in this section, the lessee shall properly plug all wells and remove all of his property from the lands.

History: En. Sec. 17, Ch. 108, L. 1927; amd. Sec. 91, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-1718. (1882.18) **Surrender of lease.** The lessee under any oil and gas lease granted by the state may at the termination of any rental year, by giving to the department 30 days' previous notice in writing, surrender and relinquish the lease to the state in whole or as to any legal subdivision of the lands covered thereby and be discharged from any obligation not yet accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished.

History: En. Sec. 18, Ch. 108, L. 1927; amd. Sec. 92, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department" for "register of state lands"; deleted a second sentence permitting exchange of pre-existing leases; and made minor changes in style and phraseology.

81-1720. (1882.20) **State officers not to be interested in leases.** It is unlawful for any officer or employee of any agency of the executive department of state government who is required to inspect or examine oil or gas wells or otherwise to gather field information in regard to prospecting for oil and gas or the production thereof, to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927; amd. Sec. 4, Ch. 171, L. 1933; amd. Sec. 93, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "officer or employee of any agency of the executive department" for "member of the state board of land commissioners, for any of the officers or employees of the department of state lands and investments, and for any officer or employee of any other department or office"; and made minor changes in phraseology and punctuation.

81-1724. (1882.24) **Repealed.**

Repeal

Section 81-1724 (Sec. 24, Ch. 108, L. 1927), repealing conflicting law, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-1726. Term of lease—renewal. All leases issued under section 81-1725 may be granted for a period not exceeding twenty (20) years, and

the lessee has a preferential right to renew the lease for an additional period not exceeding twenty (20) years subject to any terms and conditions the board imposes.

History: En. Sec. 2, Ch. 213, L. 1955; amd. Sec. 94, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "under section 81-1725" for "hereunder"; and made minor changes in style and phraseology.

81-1728. Bond of lessees. A lessee under section 81-1725 shall furnish bond to the state in a form prescribed by the board and in an amount adequate to indemnify the state against loss, damage, or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease. No bond in excess of twenty thousand dollars ($20,000) is required under any one (1) lease.

History; En. Sec. 4, Ch. 213, L. 1955; amd. Sec. 95, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "A lessee under section 81-1725 shall furnish" for "The state board of land commissioners shall require lessees, to furnish" at the beginning of the section; substituted "a form prescribed by the board" for "sum and substance prescribed by law or by regulations of the board"; and made minor changes in style and phraseology.

81-1729. Cancellation and forfeiture of lease—notice—hearings. All leases granted under section 81-1725 shall provide for their forfeiture and cancellation upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the department and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The board may order and hold hearings on any matter or question involving leases issued under section 81-1725, under such rules and regulations as it adopts; any lessee, upon application, is entitled to a hearing on any notice or demand of the department before any lease is granted, forfeited, or canceled by the board.

History: En. Sec. 5, Ch. 213, L. 1955; amd. Sec. 96, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted references to section 81-1725 for references to "this act" in two places; substituted "the department" for "the state" following "after written notice from" in the first sentence; substituted "department" for "board" near the end of the section; and made minor changes in style and phraseology.

81-1730. Rentals—disposition of funds. All rentals collected for or under leases issued under section 81-1725 shall be paid to the department and credited in the same manner as rentals from oil and gas leases.

History: En. Sec. 6, Ch. 213, L. 1955; amd. Sec. 97, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "section 81-1725" for "the provisions of this act"; substituted "department" for "commissioner of state lands and investments"; and made a minor change in phraseology.

81-1731. Termination and surrender of lease. (1) The lessee may, at the termination of any rental year, by giving to the department thirty (30) days' previous notice in writing, surrender and relinquish such lease to the state and be thereupon discharged from any obligation not yet accrued.

(2) Upon the termination for any cause of any lease issued under section 81-1725, the lessee has six (6) months after the date of the termination within which to remove all machinery, fixtures, improvements, buildings, and equipment belonging to it upon the premises.

History: En. Sec. 7, Ch. 213, L. 1955; amd. Sec. 98, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted "department" for "commissioner of state lands and investments" in subsection (1); substituted "under section 81-1725" for "pursuant to this act" at the beginning of subsection (2); and made minor changes in style and phraseology.

CHAPTER 22—EXCHANGE OF TIMBERED, CUT OR BURNED OVER LANDS

Section
81-2201. Exchange of timbered, cut over or burned over lands.
81-2202. Department of natural resources and conservation to investigate.
81-2203. Investigation and findings concerning exchange of land.
81-2204. Hearing concerning exchange—notice—final order.
81-2205. Rules and regulations shall be made by board.

81-2201. (1995.1) **Exchange of timbered, cut over or burned over lands.** The board of land commissioners may accept on behalf of the state title in fee simple to any lands, timbered or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar state land. However, no such exchange may be made except that which in the opinion of the board will benefit the public interest. For the purpose of such an exchange, all state lands, including those referred to in section 81-1401 and section 81-903, are subject to be offered for such exchange, and any restrictions against their sale or disposal are, for the purpose of such an exchange, released.

History: En. Sec. 1, Ch. 180, L. 1931; amd. Sec. 99, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style, phraseology and punctuation.

81-2202. (1995.2) **Department of natural resources and conservation to investigate.** When a proposal for an exchange is made, and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, the proposal shall be referred to the department of natural resources and conservation, and that department shall thoroughly investigate all the lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection with the proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931; amd. Sec. 100, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department of natural resources and conservation" for "state forester"; and made minor changes in style and phraseology.

81-2203. (1995.3) **Investigation and findings concerning exchange of land.** The department of natural resources and conservation shall, as soon as it concludes its investigation thereof, report to the board the facts disclosed by its investigation and include in its report a recommendation concerning the proposal including its reasons therefor in writing. If the board, after considering the report and recommendation and making such further

investigation as it considers advisable, is of the opinion that the exchange is in the public interest, the board shall consider the entire matter and make findings and conclusions concerning the proposal and make an order rejecting the proposal and dismiss the same, or if in the judgment of the board the exchange is in the public interest and should be made, the order shall so state and shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931; amd. Sec. 101, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "The department of natural resources and conservation" for "the state forester" at the beginning of the section; deleted "whenever any proposal of exchange hereunder has been referred to him" before "shall" in the first sentence; and made minor changes in style and phraseology.

81-2204. (1995.4) **Hearing concerning exchange—notice—final order.** (1) If the state board approves a proposal for exchange, the department of state lands shall publish at least once in some newspaper of general circulation in each county in which any of the lands involved are located, a notice stating in general terms the proposal and describing the lands involved and ownership thereof. The notice shall fix a day not less than twenty (20) and not more than sixty (60) days from the date of the first publication at which the board will hear objections to the proposed exchange and at which any person, firm, or corporation may appear in person or by representative and be heard.

(2) Within ten (10) days after the conclusion of the hearing the board shall make a final order describing the terms of the proposal for the exchange of the land involved and shall either dismiss the proposal as not being in the public interest or direct the proper officers to proceed to complete the exchange.

History: En. Sec. 4, Ch. 180, L. 1931; amd. Sec. 102, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted references to the department of state lands for references to the commissioner of state lands; and made minor changes in style and phraseology.

81-2205. (1995.5) **Rules and regulations shall be made by board.** The board shall adopt and promulgate such rules, regulations, and methods of procedure affecting or touching the exchanges of lands under this chapter, as in its judgment seems advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931; amd. Sec. 103, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

CHAPTER 23—CERTAIN STREAM AND LAKE BEDS AND ISLANDS PROPERTY OF STATE

Section
81-2302. Administration of lands by the state of Montana.
81-2303. Survey of lands.
81-2305. Determining title to stream beds, etc.

81-2302. Administration of lands by the state of Montana. The board shall lease or sell these lands in the same manner as other school lands of

the state are leased and sold. The board may sell or lease these lands without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in section 81-2303. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.

History: En. Sec. 2, Ch. 36, L. 1937; amd. Sec. 104, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "in section 81-2303" for "hereinafter directed" at the end of the second sentence; and made minor changes in style and phraseology.

81-2303. Survey of lands. If the board considers it necessary that any of the lands mentioned in section 81-2301 be surveyed, it shall have the lands surveyed by the county surveyor of the county in which the lands are located. If there is no county surveyor, or if the county surveyor is unable to make the survey, or if the best interests of the state require, the board shall appoint a qualified surveyor to make the surveys, and the county surveyor, or other surveyor appointed shall make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey, and within thirty (30) days after such survey file with the county clerk and recorder of that county a copy under oath of his field notes and plat and a duly certified copy of his field notes and plat with the department. For the services required in connection with the survey the county surveyor or other surveyor appointed is entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department.

History: En. Sec. 3, Ch. 36, L. 1937; amd. Sec. 105, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "department" for "commissioner of state lands and investments" at the end of the second sentence; and made minor changes in style and phraseology.

81-2304. Repealed.

Repeal

Section 81-2304 (Sec. 3, Ch. 36, L. 1937), confirming prior leases and sales of lands, was repealed by Sec. 116, Ch. 428, Laws 1973.

81-2305. Determining title to stream beds, etc. The board may take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state, and to that end may bring or defend suits or other proceedings in court, or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937; Sec. 81-614, R. C. M. 1947; redes. 81-2305 and amd. by Sec. 46, Ch. 428, L. 1973.

Amendments

The 1973 amendment renumbered this section and made minor changes in style and phraseology.

CHAPTER 24—DEVELOPMENT OF STATE LAND RESOURCES

Section
81-2401. Policy of state.
81-2402. Definition of terms.
81-2403. Development account in earmarked revenue fund—purposes for which used.

81-2404. Restriction on use of income from school and institutional lands.
81-2405. Deductions from income for development account—maximum percentage.
81-2406. Crediting of deductions from land income.
81-2407. Investment of moneys in development account.
81-2408. Rules and regulations.

81-2401. Policy of state. It is in the best interest and to the great advantage of the state of Montana to seek the highest development of state-owned lands in order that they might be placed to their highest and best use and thereby derive greater revenue for the support of the common schools, the university system and other institutions benefiting therefrom and that in so doing the economy of the local community as well as the state is benefited as a result of the impact of such development.

History: En. Sec. 1, Ch. 295, L. 1967.

Title of Act

An act relating to lands owned by the state of Montana; creating a resource development account in the earmarked revenue fund for the purpose of developing state-owned lands to increase the revenue therefrom for the support of the common schools and other institutions and objects for which the lands are held in trust; and authorizing allowances from the income from the lands for the resource development account in the earmarked revenue fund.

81-2402. Definition of terms. Unless the context requires otherwise, in this chapter:

(1) "Account" means the resource development account in the earmarked revenue fund.

(2) "Income" means all proceeds received for the use of state land except revenues required by law to be placed in the Montana trust and legacy fund.

History: En. Sec. 2, Ch. 295, L. 1967; amd. Sec. 106, Ch. 428, L. 1973.

Amendments

The 1973 amendment numbered the subdivisions; deleted definitions of "department" and "board"; and made a minor change in phraseology.

81-2403. Development account in earmarked revenue fund—purposes for which used. A resource development account in the earmarked revenue fund in the state treasury is created to be used solely for the purpose of investing in the improvement and development of state lands acquired by grant or foreclosure, in order to increase the revenue to be derived therefrom for common school support and support of the other entities, institutions and objects for which the lands are held in trust. The developments contemplated may include those projects that will develop or conserve the various state land resources including: water, both surface and underground, grazing land, agricultural land and timberland to the benefit of the state. They may also include expenses necessary to perfect title to lands claimed by the state which are suitable for development and other expenses or costs which in the judgment of the board of land commissioners are desirable or necessary in order to develop or increase the value of the land or the revenue therefrom. Appropriations from the account shall be expended for no other purposes.

History: En. Sec. 3, Ch. 295, L. 1967; amd. Sec. 107, Ch. 428, L. 1973.

Amendments

The 1973 amendment made minor changes in style and phraseology.

81-2404. Restriction on use of income from school and institutional lands. Moneys in the account derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands, shall be expended by the department of state lands solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust; provided, however, that if the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred shall be reimbursed by a method approved by the board.

History: En. Sec. 4, Ch. 295, L. 1967; amd. Sec. 1, Ch. 180, L. 1973; amd. Sec. 108, Ch. 428, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 180 and once by Ch. 428. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 180, Laws of 1973, added the proviso to the first sentence; and added the second sentence.

Chapter 428, Laws of 1973, inserted "of state lands" following "shall be expended by the department" in the first sentence.

81-2405. Deductions from income for development account—maximum percentage. The board shall determine the amount or percentage of income, not to exceed two and one-half per cent (2½%) which is necessary to achieve the purposes of this chapter, and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this chapter.

History: En. Sec. 5, Ch. 295, L. 1967; amd. Sec. 109, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act" in the middle and at the end of this section.

81-2406. Crediting of deductions from land income. All deductions from gross proceeds made in accordance with section 81-2405 shall be paid into the account, and the balance of the proceeds shall be paid into the state treasury to the credit of the proper account.

History: En. Sec. 6, Ch. 295, L. 1967; amd. Sec. 110, Ch. 428, L. 1973.

Amendments

The 1973 amendment deleted "not affected hereby" following "balance of the proceeds"; and made minor changes in style, phraseology and punctuation.

81-2407. Investment of moneys in development account. The board of investments shall invest the moneys in the resource development account in safe interest-bearing securities for the benefit of the account.

History: En. Sec. 7, Ch. 295, L. 1967; amd. Sec. 111, Ch. 428, L. 1973.

Amendments

The 1973 amendment inserted "of investments" folowing "The board."

81-2408. Rules and regulations. The board shall adopt such rules as it considers necessary and proper for the purpose of carrying out the provisions of this chapter.

History: En. Sec. 8, Ch. 295, L. 1967; amd. Sec. 112, Ch. 428, L. 1973.

Amendments

The 1973 amendment substituted "chapter" for "act"; and made a minor change in phraseology.

Separability Clause

Section 9 of Ch. 295, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 25—PRESERVATION OF ANTIQUITIES

Section
81-2501. Short title.
81-2502. Purpose of act.
81-2503. Definitions.
81-2504. Registration of sites and objects on state land—protection.
81-2505. Permit to excavate, remove or restore registered site or object.
81-2506. Distribution of collections—loans only.
81-2507. State historical register.
81-2508. Co-operative agreements with private owners.
81-2509. Co-operation with governmental units.
81-2510. Injunction to prevent waste, destruction and removal—protection program.
81-2511. Violation as misdemeanor—penalty.
81-2512. Report of discovered sites or objects—preservation.
81-2513. Advisory council.
81-2514. Act controlling.

81-2501. Short title. This act shall be known as the "State Antiquities Act."

History: En. Sec. 1, Ch. 502, L. 1973.

Title of Act

An act providnig for the identification, acquisition, restoration, enhancement, preservation and administration of historic, paleontological, archaeological, and cultural sites and objects, and providing for their use and enjoyment by the people; providing for a permit system for excavation of sites; providing penalties for violation of this act; providing that if other laws conflict with this act that this act shall control; and providing an effective date.

81-2502. Purpose of act. The purpose of this act is to provide a method of identification, acquisition, restoration, enhancement, preservation, conservation and administration of the historic, archaeological, paleontological, scientific, and cultural sites and objects of the state of Montana, and for their use and enjoyment by the people, and for the people's health and welfare.

History: En. Sec. 2, Ch. 502, L. 1973.

81-2503. Definitions. As used in this act:

(1) "Department" means the state fish and game department of the state of Montana.

(2) "Society" means the Montana historical society.

(3) "Board" means the state board of land commissioners.

(4) "Historical" means after the advent of white man into Montana.

(5) "Prehistorical" means before the advent of white man into Montana.

(6) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.

(7) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, or cultural site upon lands subject to this act.

(8) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.

(9) "Registered site" means any site registered by the department as provided in this act or covered by co-operative agreement under section 8 [81-2508] of this act.

(10) "Registered objects" mean any object registered by the department as provided in this act or covered by co-operative agreement under section 8 [81-2508] of this act.

(11) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural.

History: En. Sec. 3, Ch. 502, L. 1973.

81-2504. Registration of sites and objects on state land — protection. The board is authorized on the recommendation of the department and society to designate for registration by the department sites and objects situated on land under the control of the state of Montana. The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. The board is authorized to take adequate steps to protect such sites and objects.

History: En. Sec. 4, Ch. 502, L. 1973.

81-2505. Permit to excavate, remove or restore registered site or object. No person may excavate, remove or restore any registered site or registered object without first obtaining a permit from the department. Said permits are to be granted only after careful consideration of the application for a permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the department is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the department which shall in turn submit the report to an appropriate repository. The department shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the department and the society may give permission for the loan of such materials for scientific or educational purposes.

History: En. Sec. 5, Ch. 502, L. 1973.

81-2506. Distribution of collections—loans only. The department and the society shall supervise the distribution of all collections made under the provisions of this act and shall distribute material from such collections on loan only.

History: En. Sec. 6, Ch. 502, L. 1973.

81-2507. State historical register. The department is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state historical register.

History: En. Sec. 7, Ch. 502, L. 1973.

81-2508. Co-operative agreements with private owners. The department is authorized to enter into co-operative agreements with private landowners or the owners of objects to preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the department and such private owners. The co-operative agreements may contain a clause that the sites and objects shall be registered under this act, and also a provision that the state of Montana shall hold the owner harmless for any liability that may occur while the property is under the control of the state of Montana.

History: En. Sec. 8, Ch. 502, L. 1973.

81-2509. Co-operation with governmental units. The department is authorized and directed to co-operate with all federal, state and local government agencies, in the identification, acquisition, restoration, enhancement, preservation and administration of all such sites and objects for the use and enjoyment of the people, and for the purpose of exhibition and interpretation of the history and culture of the state of Montana.

History: En. Sec. 9, Ch. 502, L. 1973.

81-2510. Injunction to prevent waste, destruction and removal—protection program. The department is authorized and directed to apply to any district court of the state of Montana for a writ of injunction to prevent the waste, removal and destruction of any such registered site or registered object. The department shall not be required to give any bond in such application. Upon hearing of the petition for injunction, the court may restrain waste, removal or destruction upon said site, or of such object for a period of one (1) year. The court may also provide in its order that during

such period the department shall present to the parties involved a program for the protection, preservation, restoration and maintenance of the registered site or registered objects.

History: En. Sec. 10, Ch. 502, L. 1973.

81-2511. Violation as misdemeanor—penalty. Any person who shall willfully injure, remove or damage any registered site or object thereon without obtaining a permit or shall violate any of the regulations made by the department relating to state parks, historical, paleontological or prehistorical sites, buildings, structures, monuments or objects, shall be guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars ($1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment.

History: En. Sec. 11, Ch. 502, L. 1973.

81-2512. Report of discovered sites or objects—preservation. Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects as defined in this act, shall promptly report to the department the existence of any such site or object discovered in the course of such survey, excavation or construction, and shall take all reasonable steps to secure its preservation.

History: En. Sec. 12, Ch. 502, L. 1973.

81-2513. Advisory council. The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, and history and other related disciplines to advise and consult with the department and the board relating to all matters of Montana's antiquities.

History: En. Sec. 13, Ch. 502, L. 1973.

81-2514. Act controlling. In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 14, Ch. 502, L. 1973.

Effective Date

Section 15 of Ch. 502, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved April 2, 1973.

TITLE 82—STATE OFFICERS, BOARDS AND DEPARTMENTS

Chapter
1. State controller, 82-109, 82-109.2 to 82-111.
3. Athletic commission, state, 82-302.
4. Attorney general, 82-401, 82-414 to 82-423.
5. Clerk of supreme court, 82-501, 82-503.
8. Entomologist, state—duties as to agriculture, 82-804.1, 82-804.2, 82-804.4, 82-805 to 82-809, 82-811, 82-814.
10. Examiner, state, 82-1002, 82-1005, 82-1007 to 82-1011.
11. Examiners, state board of—printing contract and supplies, 82-1149.
12. Fire marshal, state, 82-1201, 82-1202, 82-1202.1, 82-1202.2, 82-1208, 82-1209, 82-1211, 82-1218, 82-1231.
13. Governor—powers—records—secretary, 82-1304.1 to 82-1304.5, 82-1311 to 82-1315.
15. Hail insurance, state board of, 82-1501, 82-1506, 82-1512, 82-1515, 82-1516, 82-1519.
17. Lieutenant governor, 82-1702.1 to 82-1703.
19. Purchasing department and agent, 82-1910, 82-1914, 82-1916 to 82-1918, 82-1922, 82-1924 to 82-1928.
20. Reporters of decisions of supreme court—publication and distribution of reports, 82-2002.
22. Secretary of state, 82-2202, 82-2208.
27. Co-ordinator of Indian affairs, 82-2701 to 82-2703, 82-2705.
30. Natural resources and development council, 82-3001 to 82-3003.
32. State records, 82-3207 to 82-3209.
33. Department of administration, 82-3303, 82-3306, 82-3314, 82-3316, 82-3317, 82-3319, 82-3323 to 82-3325, 82-3327 to 82-3331.
35. Commission on problems of aging, 82-3501 to 82-3505.
36. Montana arts council, 82-3601 to 82-3609.
37. Planning and Economic Development Act, 82-3701 to 82-3707, 82-3709.
38. Post-enemy-attack continuity in government, 82-3801 to 82-3809.
39. Teletypewriter communications system for law enforcement, 82-3901 to 82-3906.
40. Annual reports to governor, 82-4001, 82-4002.
41. Public contractor's deposits for withdrawal of retained payments, 82-4101 to 82-4104.
42. Administrative Procedure Act, 82-4201 to 82-4225.
43. State insurance plan and tort claims, 82-4301 to 82-4327.
44. Western interstate nuclear compact, 82-4401 to 82-4403.

CHAPTER 1—STATE CONTROLLER

Section
82-109. Duties of controller—expenditure control.
82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims.
82-110. Controller to prescribe uniform accounting system.
82-111. Assistance of controller to legislative assembly—reports of controller.

82-106. State controller—appointment—qualifications.

Cross-References

Office abolished and functions transferred, sec. 82A-202(2).

82-107. Controller's oath of office.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-109. Duties of controller—expenditure control. (a) * * * [Same as parent volume.]

(b) It shall be the duty of the controller to apply expenditures against nongeneral fund moneys wherever possible before using the general fund appropriations.

(c) * * * [Same as parent volume.]

(d) Notwithstanding any other provision of law, the state controller may establish procedures necessary to ensure that expenditures are made and accounted for in accordance with the budget plan authorized by the legislative assembly in the enactment of the appropriations, including, but not limited to, procedures to accrue expenses incurred in one fiscal period and paid in a subsequent fiscal period, and procedures for the issuance of purchase orders or contracts to be paid from succeeding year appropriations that will become available within three (3) months from the date of the issuance of the purchase order or contract.

History: En. Sec. 4, Ch. 194, L. 1951; amd. Sec. 1, Ch. 101, L. 1953; amd. Sec. 8, Ch. 158, L. 1959; amd. Sec. 3, Ch. 267, L. 1971.

Amendments

The 1971 amendment inserted "nongeneral fund moneys" in subsection (b); and added subsection (d).

Cross-References

Governor-elect, duties of state controller, secs. 82-1312, 82-1313 and 82-1314.

82-109.2. Pre-audit of liquidated or settled claims—transmittal of unliquidated or unsettled claims. The state controller may pre-audit liquidated or settled claims against the state, including claims by transportation companies arising from state transportation requests, ascertaining that (1) the proper authorizing signature is present, (2) the claim and supporting documents are mathematically and clerically accurate, (3) the proper appropriation and fund is charged and (4) the expenditure is not illegal. The state controller shall not make any charge against any appropriation unless the balance of the appropriation is available and adequate. If no appropriation is available for the payment of a settled or liquidated claim, the controller shall audit it and, if it is a valid claim, transmit it to the governor through the office of director of the budget for presentation to the legislative assembly.

Any unliquidated or unsettled claims submitted to the state controller shall be transmitted to the state board of examiners to be processed as provided by law.

History: En. Sec. 2, Ch. 97, L. 1961; amd. Sec. 29, Ch. 271, L. 1963; amd. Sec. 1, Ch. 91, L. 1969.

Amendments

The 1969 amendment, in the first sentence, substituted "controller may pre-audit liquidated or settled claims" for "controller shall pre-audit all liquidated or settled claims"; in item (3), deleted "and that the appropriation is available and adequate" after "fund is charged"; and substituted the present second sentence for the former second and third sentences, reading, "If the volume of claims will not permit such audit of each claim, item (2) above may be accomplished on a spot-check basis. The pre-auditing conducted by the state controller shall be concerned only with the form and accuracy of the claim and supporting documents, and the availability of the funds and in no event shall the state controller interpose his judgment regarding the wisdom or expediency of any item or items of expenditure."

82-110. Controller to prescribe uniform accounting system. (a) The controller shall prescribe and install uniform accounting and reporting for the several state boards, bureaus, departments, commissions and in-

stitutions showing the receipt, use and disposition of all public money and property, and shall develop plans for improvements and economies in the organization and operation thereof which shall be submitted to the respective heads of such boards, bureaus, departments, commissions and institutions. Copies of all such plans shall be delivered to the governor and additional copies shall be retained in the office of the controller for inspection by the members of the legislative assembly.

(b) The controller shall have the power and it shall be his duty to examine into all financial affairs of every state board, commission, bureau, department and institution for the purpose of developing plans for improvements and economies in the organization and operation thereof, and for the purpose of enabling him to properly perform any of the duties imposed upon him by this act.

(c) The controller may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall include the reporting of such canceling and writing off of accounts receivable to the next session of the legislative assembly.

(d) When not specifically provided by law, the controller may establish a minimum amount which shall be paid on a refund due from the various agencies of the state, and no refund amounting to less than the established minimum shall be paid except upon the specific written request of the person entitled to receive the refund.

(e) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the controller shall have the authority to require any moneys received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

(f) All officers, employees and other persons connected with the fiscal affairs of any state office, board, bureau, department, commission or institution must afford all reasonable facilities for the examination of accounts and investigations provided for in this act, and must make reports, returns and exhibits relating to such fiscal matters to the controller in such form as he shall prescribe; and the controller shall have and keep in his office the names of and amount of salary paid to each person regularly employed by the state of Montana and every agency thereof.

(g) If any officer or employee of the state or any agency thereof shall refuse or neglect to comply with subdivision (f) of this section, the salary of such officer or employee shall, on request of the controller to the proper official, be withheld until such recreant officer or employee shall comply therewith and the controller certifies approval to the disbursing officer.

History: En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971.

Amendments

The 1967 amendment deleted "acting with the state examiner" after "controller" near the beginning of subsection (a) and deleted "in addition to those enumerated in section 82-102 hereof" after "institutions"; and deleted "shall receive copies of all audits and reports of the state examiner relating to all state departments, boards, bureaus, institutions and agencies and, without duplicating

work done in preparing such audits and reports" after "The controller" near the beginning of subsection (b).

The 1971 amendment inserted new subsections (c), (d) and (e); redesignated former subsections (c) and (d) as subsections (f) and (g); and changed internal references to correspond.

82-111. Assistance of controller to legislative assembly—reports of controller. It shall be the duty of the controller to make all such reports and to submit all such information and data as the legislative assembly may request, and he shall, when requested so to do, attend all meetings of the appropriations committee of the house of representatives and of the finance and claims committee of the senate, and the controller shall, during the consideration of appropriation measures by the house and senate, devote so much of his time thereto as may be required by the above-named committees, under the direction of the respective chairmen of said committees.

History: En. Sec. 11, Ch. 194, L. 1951; amd. Sec. 35, Ch. 93, L. 1969.

Amendments

The 1969 amendment deleted the subsection designation "(a)" in the first paragraph and deleted former subsection (b). For previous text, see parent volume.

CHAPTER 3—ATHLETIC COMMISSION, STATE

Section

82-302. Secretary of commission—duties—limitation on salary and expense—report of commission to governor.

82-301. (4551) **State athletic commission, etc.**

Cross-References

Commission renamed and continued in department of professional and occupational licensing, sec. 82A-1602(4).

82-302. (4552) **Secretary of commission—duties—limitation on salary and expense—report of commission to governor.** The commission shall appoint, and at its pleasure remove, a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may under the direction of the commission issue subpoenas for the attendance of witnesses before the commission and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The necessary traveling and other necessary expenses, including the salary of the secretary not exceeding twenty-five dollars ($25) per month, which shall be determined by the commission, shall be paid monthly by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as herein provided. The commission shall report as provided in section 2 [82-4002] of this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927; amd. Sec. 36, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual reports.

CHAPTER 4—ATTORNEY GENERAL

Section
82-401. General duties.
82-414. Division of criminal investigation created—appointment and qualifications.
82-415. Definition of term.
82-416. Powers and duties of agents.
82-417. Access to files of division of criminal investigation.
82-418. Division of criminal investigation covered by retirement program.
82-419. State agencies to co-operate with division of criminal investigation.
82-420. Location of division of criminal investigation.
82-421. Training co-ordinator for county attorneys.
82-422. Appointment of training co-ordinator.
82-423. Functions of training co-ordinator.

82-401. (199) **General duties.** It is the duty of the attorney general:

1 to 10. * * * [Same as parent volume.]

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. * * * [Same as parent volume.]

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R. C. M. 1921; amd. Sec. 89, Ch. 199, L. 1965; amd. Sec. 13, Ch. 344, L. 1973. Cal. Pol. C. Sec. 470.

Amendments

The 1973 amendment deleted "state board of education" following "state board of land commissioners" in subdivision 11.

Legislative Intent

Section 14 of Ch. 344, Laws 1973 read "It is the intent of the legislature that sections 1 through 11 of this act be codified in title 75, chapter 56, R. C. M. 1947."

Separability Clause

Section 15 of Ch. 344, Laws 1973 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 344, Laws 1973 read "Sections 75-5601 through 75-5606 and 75-5608, R. C. M. 1947, are repealed."

Cross-References

Attorney general as head of department of law enforcement and public safety, sec. 82A-1201.

Assistance of County Attorneys

The attorney general has no power to initiate a felony prosecution in a district court independent of the county attorney, but he may order the county attorney to do so. State ex rel. Woodahl v. District Court, — M —, 495 P 2d 182.

82-414. Division of criminal investigation created—appointment and qualifications. (1) There is hereby created a permanent division of criminal investigation within the office of the state attorney general.

(2) The attorney general shall appoint such agents and other necessary assisting personnel and fix their compensation.

(3) Each agent shall be a person qualified by experience, training and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971.

Title of Act

An act creating the position of criminal investigator within the department of the attorney general and defining the duties of said position.

Amendments

The 1971 amendment substituted "division of criminal investigation" for "posi-

tion of criminal investigator" in subsection (1); substituted "such agents" for "the investigator" in subsection (2); and substituted "Each agent" for "The investigator" at the beginning of subsection (3).

Cross-References

Position abolished and functions transferred, sec. 82A-1202(2).

82-415. Definition of term. As used in this act:

"Agent" means a person appointed to the division of criminal investigation within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted the definition of "agent" for a paragraph defining "investigator" as "the person appointed to the position of criminal investigator within the attorney general's office."

82-416. Powers and duties of agents. An agent shall have the power and duty to:

(1) Assist city, county, state and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) Assist various law enforcement schools held in the state for law officers when requested;

(3) Co-operate with the bureau of criminal identification and investigation;

(4) Act as a peace officer as defined in the laws of Montana when engaged in assisting or acting under the direction of city, county, state and federal law agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "An agent" for "The investigator" at the beginning of the section; and added subdivision (4).

82-417. Access to files of division of criminal investigation. A person with a known criminal record shall not be permitted access to the files of the division of criminal investigation, nor shall anyone else, without the order of a district judge or a supreme court justice.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "division of criminal investigation" for "investigator."

82-418. Division of criminal investigation covered by retirement program. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "All agents" for "The investigator" at the beginning of the section.

82-419. State agencies to co-operate with division of criminal investigation. All state departments and agencies shall co-operate with such agents

and assisting personnel in providing transportation, educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted "such agents and assisting personnel" for "the investigator"; and made a minor change in phraseology.

82-420. Location of division of criminal investigation. The location of the division of criminal investigation and its personnel shall be at the discretion of the state attorney general.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971.

Amendments

The 1971 amendment substituted this section for a provision requiring that the office of the criminal investigator be located at Deer Lodge.

Effective Date

Section 8 of Ch. 219, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

82-421. Training co-ordinator for county attorneys. There is created, within the department of justice, a training co-ordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973.

Title of Act

An act creating a training co-ordinator of county attorneys within the department of justice; providing that the training co-ordinator be appointed by the attorney general; providing for the functions of the training co-ordinator; and providing an immediate effective date.

82-422. Appointment of training co-ordinator. The training co-ordinator shall be appointed by the attorney general from a list of three (3) names proposed and submitted by the Montana county attorneys association.

History: En. Sec. 2, Ch. 353, L. 1973.

82-423. Functions of training co-ordinator. The training co-ordinator shall perform the functions assigned by the department head. The functions may include, but are not limited to, the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures and policies which will ensure that criminal laws are applied consistently and uniformly throughout the state of Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs and other relevant criminal law information;

(4) providing assistance with research, briefs or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

History: En. Sec. 3, Ch. 353, L. 1973.

Effective Date

Section 4 of Ch. 353, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 17, 1973.

CHAPTER 5—CLERK OF SUPREME COURT

Section
82-501. Election and term of office.
82-503. Fees.

82-501. (370) **Election and term of office.** There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election.

History: En. Sec. 870, Pol. C. 1895; re-en. Sec. 299, Rev. C. 1907; re-en. Sec. 370, R. C. M. 1921; amd. Sec. 45, Ch. 100, L. 1973. Cal. Pol. C. Secs. 749-758.

Amendments

The 1973 amendment deleted a final clause relating to the term of office of the first clerk elected under the 1889 constitution.

82-503. (372) **Fees.** He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, twenty dollars ($20) payable by the appellant, and ten dollars ($10) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, twenty dollars ($20), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars ($5); for making transcripts, copies of papers or record, fifteen cents ($.15) per folio; for comparing any document requiring a certificate, five cents ($.05) per folio; for each certificate under seal, one dollar ($1).

Three-fourths (¾) of all fees collected by him must be paid into the state treasury, which shall be credited to the credit of the general fund, one-fourth (¼) of all fees collected by him shall be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943; amd. Sec. 87, Ch. 147, L. 1963; amd. Sec. 3, Ch. 218, L. 1967.

Compiler's Notes

The last paragraph of section 3, Chapter 218, Laws 1967, read: "This act shall be in full force and effect from and after its passage and approval." The act was approved March 1, 1967.

Amendments

The 1967 amendment increased filing fees on appeals to the supreme court, payable by the appellant, from $10 to $20, and by the respondent, from $5 to $10 and increased fees for filing petition for any writ from $10 to $20 in the first paragraph; added "Three-fourths (¾) of" at the beginning of the second paragraph; added the passage beginning "and one-fourth (¼) of all fees collected" at the end of the second paragraph; and made minor changes in style.

CHAPTER 6—DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS—CLERKSHIP OF CONSOLIDATED BOARDS

82-601. (122) **Deputy state officers.**

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

CHAPTER 8—ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

Section
82-804.1. State entomologist of Montana.
82-804.2. Duties of the state entomologist.
82-804.4. Expenses.
82-805. Definitions.
82-806. Powers and duties of the department of agriculture.
82-807. Registration.
82-808. Registration fees.
82-809. Inspection of bees or used beekeeping equipment transported interstate.
82-811. Disposition of fees.
82-814. Orders effective until reversed or modified by court.

82-801 to 82-804. (913 to 916) **Repealed.**

Repeal

These sections (Secs. 1 to 4, Ch. 59, L. 1903; Secs. 1 to 4, Ch. 103, L. 1907; Sec. 1, Ch. 114, L. 1925), relating to the state entomologist, were repealed by Sec. 5, Ch. 75, Laws 1967.

82-804.1. State entomologist of Montana. The state entomologist of Montana shall be an entomologist who is a member of the resident faculty of the Montana agricultural experiment station at Bozeman, Montana, and who shall be appointed by the dean of the college of agriculture of Montana state university.

History: En. Sec. 1, Ch. 75, L. 1967.

Title of Act

An act providing for the appointment, qualifications and duties of the state entomologist; providing that expenses be paid out of the legislative appropriation for his office; and repealing sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947.

Cross-References

Position abolished and functions transferred, sec. 82A-502(1).

82-804.2. Duties of the state entomologist. It shall be the duty of the state entomologist to conduct investigations pertaining to insects and other arthropods which affect or may affect plants and animals. When an injurious infestation of an insect or other arthropod occurs in any part of the state, it shall be his duty, so far as it is possible without conflicting with his other duties, to go to the scene of the infestation or send a suitably qualified assistant. The state entomologist or said assistant shall determine the extent and seriousness of the infestation and make public the best remedies to be employed.

History: En. Sec. 2, Ch. 75, L. 1967.

82-804.3. Repealed.

Repeal

Section 82-804.3 (Sec. 3, Ch. 75, L. 1967), relating to biennial report of the state entomologist, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-804.4. Expenses. The state entomologist shall receive no compensation for his services other than that which he may receive from the Montana agricultural experiment station and Montana state university, but such office and laboratory expenses and such salaries of necessary assistants, together with such travel and per diem expenses for himself and assistants incurred in the course of performing the duties prescribed by this act, shall be paid out of sums appropriated from time to time by the legislative

assembly of the state of Montana to the state entomologist. Payment shall be made on claims certified by the state entomologist and presented to the appropriate state agency.

History: En. Sec. 4, Ch. 75, L. 1967.

Repealing Clause

Section 5 of Ch. 75, Laws 1967 read "Sections 82-801, 82-802, 82-803 and 82-804, R. C. M. 1947, are repealed."

Effective Date

Section 6 of Ch. 75, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

82-805. Definitions. The following terms shall be construed respectively to mean:

(a) to (c). * * * [Same as parent volume.]

(d) "Bees"—Any stage of the bees in the genus, Apis.

(e) to (h). * * * [Same as parent volume.]

Words used in this act shall be construed to import either the plural or singular, as the case demands.

History: En. Sec. 1, Ch. 79, L. 1947; amd. Sec. 1, Ch. 475, L. 1973.

Amendments

The 1973 amendment substituted "bees in the genus, Apis" for "common honeybee Apis mellifera" at the end of subdivision (d).

82-806. Powers and duties of the department of agriculture. To prevent the spread of contagious and infectious disease among bees and apiaries, the department of agriculture shall have the following powers:

1. * * * [Same as parent volume.]

2. To order disinfection of any bee, beehive, brood comb or any other equipment which is infected or contaminated and with full power to order the burning of, or to burn, any bee, beehive, brood comb, or any other equipment, if, in his judgment, disinfection will not remove the infection or contamination, provided, however, before burning any such property, the department, shall give the owner of, or person in charge thereof, a written notice at least five (5) days prior to the date on which said property will be burned. This notice to be given by registered mail or personally served upon the owner of, or person in charge of, such property.

3. To quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during such quarantine, to prevent the removal from such apiary, of any bees or equipment excepting under authority of a special permit issued by the department permitting such removal under conditions and regulations to be prescribed by it. No person shall sell, or offer for sale, any apiary, bees or equipment while the same is under quarantine unless a permit authorizing such sale or removal is made by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at such quarantine apiary at a conspicuous place and a copy thereof shall be personally served or sent by registered mail to the owner of such apiary or person in charge thereof, and such quarantine shall continue in effect until it is ordered removed and a copy of such removal served in the same manner.

4. To inspect any apiary, hives, equipment, or premise for the presence of disease.

History: En. Sec. 2, Ch. 79, L. 1947; amd. Sec. 1, Ch. 28, L. 1953; amd. Sec. 2, Ch. 475, L. 1973.

Amendments

The 1973 amendment deleted from the beginning of the section a clause designating the state entomologist as state apiarist; substituted references to the department of agriculture throughout the section for references to the state apiarist and his deputies; deleted former subdivision 2, relating to the burning of infected bees, hives and equipment; renumbered subdivisions 3, 4 and 5 as 2, 3 and 4; substituted "the department, owner, or person in charge" in the third sentence of subdivision 3 for "any officer"; substituted "hives, equipment, or premise for the presence of disease" in subdivision 4 for "or honey house or building or portion of building or container in which honey is stored, graded or processed, and determine whether or not any unsanitary conditions exist"; deleted from subdivision 4 a second sentence authorizing notice to the owner to correct unsanitary conditions and making it a misdemeanor to fail to obey the notice; and made minor changes in phraseology.

82-807. Registration. It shall be unlawful for any person, firm or corporation in the state of Montana to possess or own an apiary without registering the same as hereinafter provided. Every person, firm or corporation who shall own or possess in the state of Montana an apiary shall, on or before the first day of April each year hereafter, cause the same to be registered in the following manner:

1. Applications shall be made to the department for registration blanks.

2. Registration blanks shall be furnished by the department, the blank shall contain a statement of the name, place of residence, place of business, of the owner, together with the number of colonies of bees, hives and equipment in such apiary, and the location in the state, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range, and if within the corporate limits of a town or city, by setting forth the number of the lot and block in such town or city and stating also the name of the owner, renter and/or occupant of the land whereupon such apiary is located, and give such other information as the department may require under rules and regulations established by him for the protection, safety and welfare of the public and beekeeping industry. The registration blanks shall also include the date when the location was first established.

3. Upon receipt of such application, and payment of the fees hereinafter prescribed, the department shall be authorized to issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location and the number of colonies of bees or size of the apiary authorized under such registration.

4. In issuing certificates of registration for apiaries established and registered as now provided by law, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous established location.

5. * * * [Same as parent volume.]

6. Before authorizing the establishment of new locations, the department shall give notice of at least ten (10) days by registered letter to all registered apiarists likely to be affected by the proposed new location so that any party affected may file written protests with the department against authorizing such new locations. In the event a written protest is filed, the department may require a hearing and notice of the time and place of such hearing shall be given all parties interested by registered mail at least ten (10) days before the date set for the hearing.

7. It shall be unlawful for the owner of any established registered apiary to change locations without first receiving from the department a permit to establish such new location. In making such application he shall specify the location with the same particularity as in the application or original registration. If such new location is not used within sixty (60) days after a permit is issued, then such permit shall lapse and all right thereunder shall terminate. Provided further that permits for new locations shall not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

8. Suitable evidence of registration furnished by the department shall be posted in a conspicuous place at or near the location of the colony of honeybees or beehives. If an owner has more than one location, suitable evidence of registration furnished by the department shall be posted at each location.

9. * * * [Same as parent volume.]

10. Any registration not applied for by April 1st of each year hereafter shall be considered as a late registration and as such shall incur an added penalty of ten (10) per cent of the regular applicable registration fee. Registrants who fail to apply for reregistration by April 1st of each year hereafter, shall be notified of their delinquency by the department. Such notification shall be by registered mail, postage prepaid, and shall be deemed sufficient if deposited in a United States post office or mail box and addressed to such registrant at his last address appearing in the bee location registration files of the department at least ten (10) days prior to May first. Any location for which application for reregistration is not made by May first of each year hereafter shall be forfeit [forfeited] and all rights thereunder shall lapse and terminate.

11. Any apiary not regularly attended in accordance with good beekeeping practice and which comprises a hazard or threat to disease control in the beekeeping industry may be considered an abandoned apiary and will be subject to seizure by the department. Any diseased equipment or equipment by reason of its physical condition or construction cannot be inspected, may be burned and the remainder may be sold at public auction, proceeds after the cost of sale are deducted to be returned to the former owner or his estate; provided, however, that before burning any such equipment, or causing the same to be sold, the department, shall give the owner of, or person in charge thereof, a written notice at least five (5) days prior to the date on which said property will be burned or sold. This notice to be given by registered mail or personally served upon the owner of, or person in charge of, such property. If the owner or person in charge cannot be located, a registered letter sent to the owner's last address registered with the department is sufficient notice under this section.

12. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 79, L. 1947; amd. Sec. 2, Ch. 28, L. 1953; amd. Sec. 3, Ch. 475, L. 1973.

Amendments

The 1973 amendment deleted from the preliminary paragraph a clause relating to the date of the first annual registration; substituted references to the department throughout the section for references to the state apiarist; deleted from subdivision 2 a second paragraph requiring reports of colonies added to the apiary; deleted from subdivision 6 a third sentence authorizing action in the district court to set aside or modify the apiarist's order; substituted

"suitable evidence of registration furnished by the department" in two places in subdivision 8 for references to a certificate of registration and a duplicate certificate; deleted from subdivision 8 a final sentence relating to the form of duplicate certificates; inserted "or equipment by reason of its physical condition or construction cannot be inspected" near the beginning of the second sentence of subdivision 11; added the fourth sentence of subdivision 11; and made minor changes in phraseology.

82-808. Registration fees. Each year before a certificate of registration shall be issued for any apiary, the owner or applicant for such certificate shall pay to the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each applicant, firm or corporation in the state of Montana:

1 to 10 colonies of bees	$ 2.50
11 to 50 colonies	5.00
51 to 200 colonies	10.00
201 to 300 colonies	15.00
301 to 500 colonies	20.00
501 to 1000 colonies	30.00
1001 to 2000 colonies	35.00
2001 to 3000 colonies	45.00
3001 to 4000 colonies	55.00
4001 to 5000 colonies	65.00
5001 colonies and upwards	75.00

If, after the registration is made for the ensuing year, additional or new colonies are added, the same shall be reported as in this act provided and fees shall be paid in accordance with the above schedule for the total number of colonies for that year.

History: En. Sec. 4, Ch. 79, L. 1947; amd. Sec. 1, Ch. 175, L. 1973; amd. Sec. 4, Ch. 475, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 175 and once by Ch. 475. Neither amendatory act mentioned the other but they made identical changes with the exception of a minor difference in phraseology. With respect to this difference, the compiler has used the text of Ch. 475, the later in time of approval, above.

Amendments

Chapter 175, Laws of 1973, substituted "department of agriculture" for "state apiarist"; changed the former classification of "301 to 400 colonies" to "301 to 500 colonies"; adjusted all registration fees upward; added new classifications for owners of more than 500 colonies; and deleted the second sentence of the second paragraph, which provided for a yearly $3.00 fee for the registration of any apiary not within the former schedule.

Chapter 475, Laws of 1973, made changes identical to those in Chapter 175 with the exception that "department" was substituted for "state apiarist."

Effective Date

Section 2 of Ch. 175, Laws 1973 read "This act is effective June 1, 1973."

82-809. Inspection of bees or used beekeeping equipment transported interstate. It shall be unlawful to transport or bring into the state of Montana any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of said material. In addition, any previously used equipment transported into the state shall be quarantined by the department in accordance with the provisions of subdivision 3 of section 82-806,

from the time it enters the state until it has been in use while under quarantine for a minimum of ninety (90) days and at least until the following July first.

The department may also inspect and certify as disease-free, bees or beekeeping equipment which are to be transported from Montana to a state which requires an inspection in the state of origin.

The costs of making inspections provided in this section shall be paid in advance by the owner of the bees or equipment and shall include a per diem of ten dollars ($10.00) and all necessary traveling expenses and a fee of five dollars ($5.00) for the issuance of a certificate of health. If inspection by an official of any other state is deemed insufficient for the protection of the Montana bee industry by the department, the department will so state by public statement, and importation of beekeeping materials, including honey for extracting, from such state shall be denied, unless the same is first inspected by the department and there is obtained from it a certificate of inspection showing that the same is apparently free from contagious or infectious disease. The costs of making such inspection shall be paid by the person requesting the same and inspection may be made at any point outside the state of Montana convenient to the person making the inspection. The department may require that the costs of making such inspection be paid in advance and such costs shall include per diem of ten dollars ($10.00) and of necessary traveling expenses, and a fee of five dollars ($5.00) for the issuance of the certificate of inspection. Such beekeeping materials shall also be subject to quarantine as hereinbefore in this section provided.

History: En. Sec. 5, Ch. 79, L. 1947; amd. Sec. 3, Ch. 28, L. 1953; amd. Sec. 5. Ch. 475, L. 1973.

Amendments

The 1973 amendment substituted references to an official responsible for apiary regulations for references to the state apiarist of other states; substituted references to the department for former references to the Montana state apiarist and his deputies; inserted the second paragraph; substituted "provided in this section" for "relating to the listing of quarantine of said beekeeping equipment" near the beginning of the third paragraph; inserted "the bees or" before "equipment" in the first sentence of the third paragraph; and made minor changes in phraseology.

82-811. Disposition of fees. All registration fees and inspection fees collected under the provisions of this act shall be transmitted by the department to the state treasurer, who shall deposit the same to the credit of the general fund of the state.

History: En. Sec. 7, Ch. 79, L. 1947; amd. Sec. 6, Ch. 475, L. 1973.

Amendments

The 1973 amendment substituted "department" for "state apiarist."

82-814. Orders effective until reversed or modified by court. Until reversed or modified by a court of competent jurisdiction any order or regulation made and promulgated by the department, including any order refusing permit for the establishment of a new apiary location, shall be effective until reversed or modified by a final decision, or final judgment, and while such action is pending, (section 93-8706); and no injunction or other process or writ shall be issued or made by any court restraining such enforcement until such final determination.

History: En. Sec. 10, Ch. 79, L. 1947; amd. Sec. 7, Ch. 475, L. 1973.

Amendments

The 1973 amendment substituted "department" for "state apiarist."

CHAPTER 9—ENUMERATION OF CERTAIN EX OFFICIO STATES OFFICERS

82-904. (119) **Repealed.**

Repeal

Section 82-904 (Sec. 349, Pol. C. 1895; Sec. 2, Ch. 67, L. 1973), relating to the composition of the state board of land commissioners, was repealed by Sec. 116, Ch. 428, Laws 1973.

CHAPTER 10—EXAMINER, STATE

Section

82-1002. Duties of state examiner.
82-1005. Power to examine books and papers.
82-1007. Access to accounts of public officers—actions to compel.
82-1008. Examination of accounts of cities, towns and certain school districts, and fire districts.
82-1009. Laws applicable to such examinations.
82-1010. Entering examiner's report in minutes of city or town—publication.
82-1011. Salary and expenses.

82-1002. (210) **Duties of state examiner.** The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, clerk of the supreme court, county treasurers, county clerks, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other county and municipal officers and boards.

The costs incurred by the state examiner and his assistants in conducting the examinations of counties, cities and towns shall be reimbursed to the state at the rate of eighty dollars ($80) per day for each person engaged in an examination, and the money shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers are hereby compelled to conform therewith.

3. The state examiner, after examination of the affairs of the state treasurer and clerk of the supreme court, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or nonperformance of duty is found on the part of any such officer, they must be proceeded against by the attorney general as provided by law.

4. The state examiner, or his assistants, after the examination of the affairs of any county, city or town officers, must make report of such examination to the board of county commissioners, the city or town councils and to the county, city or town attorney of such county, city or town within sixty (60) days after such examination; and if any violation

of law or nonperformance of duty is found on the part of any officer or board, such officer or board must be proceeded against by the attorney general, county, or city or town attorney as provided by law.

5. The state examiner must report as provided in section 2 [82-4002] of this act.

6. It shall be the duty of the county attorneys of the various counties of the state of Montana and the attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town, as to what proceedings he has instituted or is intending to institute relating to violations of law and nonperformance of duty, as set forth in the report of the state examiner.

7. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or nonperformance of duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper officials, until proper and satisfactory explanation has been made to the state examiner for such nonperformance of duty, provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city or town.

8. When in the judgment of the state examiner it shall be deemed necessary, special examinations may be made of any county, city, town, school district, irrigation district, high school, or any other county or municipal office, board or commission, whether temporary or permanent, however created, and for whatever purpose, having the control, management, collection or disbursement of any public money of any character or description. Costs for such special examination shall be reimbursed to the state at the conclusion of such examination at the rate of eighty dollars ($80) a day for each person engaged in the examination and shall be paid to the state treasurer for the credit of the general fund.

History: Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907; re-en. Sec. 210, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1923; amd. Sec. 14, Ch. 249, L. 1967; amd. Sec. 37, Ch. 93, L. 1969; amd. Sec. 2, Ch. 256, L. 1971; amd. Sec. 1, Ch. 388, L. 1971.

Amendments

The 1967 amendment, in subdivision 1, deleted "state auditor, secretary of state" after "treasurer"; deleted "state game warden, register of state land office, and all other state officers having the collection or handling of state money" after "supreme court"; inserted "county and municipal" after "all other"; deleted "and" before "boards"; and added "and institutions" after "boards"; in subdivision 2, deleted "and the educational, charitable, penal, and reformatory institutions of the state of Montana" after "school districts"; deleted "and officers of educational, charitable, penal and reformatory institutions of the state of Montana" after "district officers"; deleted old subdivision 3, which read, "To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal, and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and all of said institutions"; redesignated old subdivisions 4 through 10 as new subdivisions 3 through 9; in new subdivision 5, now subdivision 3, substituted "officer or" for "state officer, board, or institution" after "affairs of any"; and at the end new

subdivision 7, now subdivision 5, deleted "but such report must not be printed unless the printing thereof be ordered by the state board of examiners."

The 1969 amendment substituted reporting requirements of section 82-4002 for former provisions of subdivision 7, now subdivision 5, requiring annual reports.

Chapter 256, Laws of 1971, added the second paragraph to subdivision 1; added a subdivision 10 which the compiler has redesignated as subdivision 8; and made minor changes in punctuation and style.

Chapter 388, Laws of 1971, deleted "county assessors" from the first paragraph of subdivision 1; deleted "and institutions" from the end of the first paragraph of subdivision 1; deleted former subdivisions 3 and 4, which were subdivisions 4 and 5 in the parent volume; redesignated former subdivisions 5 to 9, inclusive, as subdivisions 3 to 7, inclusive; substituted "the state treasurer and clerk of the Supreme Court" for "any officer or board of county commissioners" near the beginning of subdivision 3; deleted "or board" following "officer" in the latter part of subdivision 3; deleted "or county attorney" following "attorney general" near the end of subdivision 3; inserted references to cities and towns, city and town officers, city and town councils and city and town attorneys in subdivision 4; changed the reporting time required in subdivision 4 from thirty to sixty days after examination; inserted "attorney general" near the end of subdivision 4; and made minor changes in phraseology and punctuation.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(a).

82-1005. (212) **Power to examine books and papers.** The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

History: Ap. p. Sec. 494, Pol. C. 1895; amd. Sec. 493, p. 107, L. 1897; amd. Sec. 493, Ch. 100, L. 1903; re-en. Sec. 211, Rev. C. 1907; re-en. Sec. 212, R. C. M. 1921; amd. Sec. 15, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "or state officer" after "any county."

82-1007. (214) **Access to accounts of public officers—actions to compel.** (1). * * * [Same as parent volume.]

(2) Any county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

(3) Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have

existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

(4). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 84, L. 1915; re-en. Sec. 214, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1939; amd. Sec. 16, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state" after "Any" at the beginning of subsection (2); deleted "with the secretary of state if such officer shall be a state officer" after "amount thereof"; deleted "and the governor, in the case of a state officer" after "of his office"; and, in subdivision (3), deleted "the secretary of state in case of a state officer, and" after "in the office of."

82-1008. (215) **Examination of accounts of cities, towns and certain school districts, and fire districts.** The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one (1) examination each year of the books and accounts of all incorporated cities and towns.

The state examiner shall have the power and authority, and it shall be his duty, to make at least one (1) examination during each fiscal year of the books and accounts of all school districts of the first and second class and of third class districts maintaining a high school, in like manner as is now required by law for the examination of the books and accounts of state and county officers.

A copy of the examiner's report shall be filed with the county superintendent of schools, the state superintendent of public instruction, and the clerk of the school district, and any citizen of the state of Montana shall have the right to inspect, copy out and publish any of the facts therein contained.

The state examiner shall have the power and authority and it shall be his duty to make at least one (1) examination during each fiscal year (of) the books and accounts of all fire districts and volunteer fire departments created and existing in unincorporated areas, towns and villages supported by a mill levy.

For such examination a fee of seven dollars fifty cents ($7.50) per hour per man shall be charged and said fee shall be paid by the fire district or fire department into the state treasury and credited by the state treasurer to the earmarked revenue fund.

A copy of such audit shall be filed with the clerk and recorder of the county in which such fire district or fire department exists.

The costs incurred by the state examiner and his assistants in conducting the examinations of county-free high schools, school districts or departments shall be reimbursed to the state at the rate of seventy dollars ($70) per day for each person engaged in an examination, and the moneys

shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

History: En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937; amd. Sec. 1, Ch. 169, L. 1955; amd. Sec. 1, Ch. 137, L. 1959; amd. Sec. 1, Ch. 125, L. 1963; amd. Sec. 1, Ch. 141, L. 1963; amd. Sec. 3, Ch. 256, L. 1971.

Amendments

The 1971 amendment deleted the former third paragraph, for text of which see parent volume; added the final paragraph; and made a minor change in phraseology.

82-1009. (216) **Laws applicable to such examinations.** That all laws now in force relative to the examination of the books and accounts of county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class.

History: En. Sec. 2, Ch. 84, L. 1913; re-en. Sec. 216, R. C. M. 1921; amd. Sec. 17, Ch. 249, L. 1967.

Amendments

The 1967 amendment deleted "state and" after "accounts of."

82-1010. (216.1) **Entering examiner's report in minutes of city or town—publication.** Upon receipt of the state examiner's report covering the examination of the affairs of any incorporated city or town, it shall be the duty of the mayor and the members of the city council or city commission to have such report entered and made a part of the minutes of the next regular meeting. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials and for cities and towns with more than one thousand (1,000) residents, send a like copy to the official newspaper of the city or town for publication. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials in cities and towns with one thousand (1,000) or less, send a copy of only its general comments section to the official newspaper of the city or town for publication. Such publication shall be published in one issue of the aforesaid official newspaper forthwith and shall be a charge against the city or town at a rate to be agreed on but not to exceed that charged boards of county commissioners for the printing of the reports of the state examiner.

History: En. Sec. 1, Ch. 33, L. 1929; amd. Sec. 1, Ch. 456, L. 1973.

Amendments

The 1973 amendment inserted "and for cities and towns with more than one thousand (1,000) residents" in the second sentence; and inserted the third sentence.

82-1011. (218) **Salary and expenses.** The salary of the state examiner, for all services rendered in any capacity whatever, shall be in such amount as may be specified by the legislative assembly in the appropriation to the state examiner, and in addition thereto the state shall pay the necessary office and travel expenses of himself and assistants. If the legislative assembly does not specify the maximum salary of the state examiner an increase in the salary of the state examiner must be approved by the board of examiners. Before approving any salary increase, the board of examiners

shall review the salaries of comparable positions in Montana state government, other states, and private industry.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1953; amd. Sec. 7, Ch. 225, L. 1963; amd. Sec. 10, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * to the state examiner" for "not more than ten thousand dollars ($10,000) per year" in the first sentence, and added the last two sentences.

82-1014 to 82-1016. Repealed.

Repeal

These sections (Secs. 1 to 3, Ch. 279, L. 1959; Secs. 1, 2, Ch. 81, L. 1961; Sec. 91, Ch. 199, L. 1965), relating to the examination of accounts of state institutions, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 11—EXAMINERS, STATE BOARD OF—PRINTING CONTRACT AND SUPPLIES

Section
82-1149. Establishment of prices for state printing.

82-1137. (260) State printing—union label, etc.

Cross-References

Printing defined, sec. 19-103.1.

82-1144. (267) Repealed.

Repeal

Section 82-1144 (Sec. 713, Pol. C. 1895), relating to interest of government officers in state printing contracts, was repealed by Sec. 3, Ch. 43, Laws 1973. For new law, see sec. 82-1922.

82-1149. (276) Establishment of prices for state printing. Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, or any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana, and of general bona fide and paid circulation with second class mailing privilege, and having been printed and published continuously in the state of Montana for at least twelve (12) months immediately preceding such publication; the price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication, set in the same size type and published for the same number of insertions.

History: En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973.

Amendments

The 1969 amendment increased the maximum rates for standard work from $2 to $2.25 per folio of 100 words for the first insertion, and from 90¢ to $1.25 per folio for each subsequent insertion; and increased the maximum rates for rule and figure work from $3 to $3.75 per folio for the first insertion, and from 90¢ to $1.25 per page for each subsequent insertion.

The 1973 amendment substituted "the minimum going rate charged any other advertiser for the same publication, set in the same size type and published for the same number of insertions" at the end of

the section for "the following rate and standard hereby established and prescribed as the maximum rate and standard for all publications as aforesaid" and for paragraphs (a) and (b) setting out specific maximum rates.

Repealing Clause

Section 2 of Ch. 307, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Cross-References

Printing defined, sec. 19-103.1.

82-1157. (283.1) **Preference of Montana printers, etc.**

Cross-References

Printing defined, sec. 19-103.1.

CHAPTER 12—FIRE MARSHAL, STATE

Section
82-1201. Creation of office of state fire marshal—fire prevention advisory commission.
82-1202. Powers of the state fire marshal.
82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation.
82-1202.2. Notice of public hearing—publication—adoption of rules—effective date.
82-1208. Special deputy fire marshals—acting fire marshal—fire marshal's employees.
82-1209. Investigation of fires.
82-1211. Penalty for violation of law.
82-1218. Entering of buildings for purpose of examination.
82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.

82-1201. (2737) **Creation of office of state fire marshal—fire prevention advisory commission.** (1) There is an office of state fire marshal, which is under the supervision and control of the commissioner of insurance.

(2) The state fire marshal shall be appointed by the commissioner of insurance and shall serve at his pleasure.

(3) A person appointed state fire marshal shall:

(a) have at least ten (10) years of progressively responsible experience in fire protection; or

(b) a degree in engineering from a recognized institution of higher education and two (2) years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) Not later than thirty (30) days after this act becomes effective the commissioner of insurance shall appoint a fire prevention advisory commission composed of the following members:

(a) One person representing the fire insurance industry whose initial term shall be for one (1) year;

(b) One person representing industry whose initial term shall be for one (1) year;

(c) One person representing full-time paid fire departments whose initial term shall be for two (2) years;

(d) One person representing volunteer fire departments whose initial term shall be for two (2) years;

(e) One person representing architects of the state whose initial term shall be for three (3) years;

(f) One person representing the public whose initial term shall be for four (4) years;

(g) The commissioner of insurance.

After termination of the initial term, all members shall be appointed for four (4) year terms. Appointed members of the commission shall be reimbursed for meetings at the rate of twenty dollars ($20) per day plus actual expenses including mileage, food, and lodging. The commissioner of insurance shall serve as chairman, and the state fire marshal shall serve as secretary of the commission.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921; amd. Sec. 1, Ch. 229, L. 1967.

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment, it read, "There is hereby created and established the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex officio."

Cross-References

Advisory commission abolished, sec. 82A-1208.

Marshal's office abolished and functions transferred, sec. 82A-1202(5).

82-1202. (2737.1) **Powers of the state fire marshal.** The state fire marshal shall:

(1) Make at least one inspection during every year, of each state institution, and submit a copy of the report to the state department of institutions with recommendations in regard to fire prevention, fire protection and to the public safety.

(2) Make at least one inspection during every year, of each unit of the Montana university system, and submit a copy of the report to the executive secretary of the university system with recommendations in regard to fire prevention, fire protection and to the public safety.

(3) Inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this act.

(4) Do all things necessary and convenient for carrying into effect the fire prevention laws of this state governing this act and may, adopt necessary rules for safeguarding lives and property from the hazards of fire and explosion after consultation with the fire prevention advisory commission and approval by the commissioner of insurance. No rule shall become effective until after a public hearing held in the manner described in section 82-1202.2, R. C. M. 1947. If fire prevention rules are violated, the fire marshal may maintain an action to enjoin the use of all or a portion of a building or facility, or restrain a specific activity, until there is compliance with the rules.

(5) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the state building code council and filing with the secretary of state.

History: En. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969.

Compiler's Notes

The compiler deleted the number "4" after "section" in the second sentence of subdivision (4) as superfluous.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1969 amendment, in the first sentence in subdivision (4), substituted "adopt" for "promulgate" before "necessary rules"; in the second sentence, inserted "R. C. M. 1947" after "82-1202.2"; and, in the last sentence, deleted "promulgated by the fire marshal" after "fire prevention rules" and substituted "the fire marshal" for "he" before "may maintain"; and added subdivision (5).

82-1202.1. Rules promulgated by state fire marshal—adoption of other standards—providing for a penalty for violation. (1) Rules promulgated by the state fire marshal by authority of section 82-1202, R. C. M. 1947, shall be reasonable and calculated to effect the purposes of this act. They shall include but not be limited to requirements for design, construction, installation, operation, storage, handling, maintenance or use of the following: structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas and similar products; calcium carbide and acetylene generators; flammable motion picture film, combustible fibres; hazardous chemicals; rubbish, open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the state building code council and filing with the secretary of state.

(3) Standards of the National Fire Protection Association, United States Bureau of Standards, American Insurance Association Standards may be adopted in whole or in part by reference.

(4) Any person violating any rule made under the provisions of this section shall be guilty of a misdemeanor.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 120 and once by Ch. 366. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made a composite section incorporating both amendments. In the composite section the subsection added by Ch. 120 has been designated as (4) rather than (3).

Amendments

Chapter 120 of Laws 1969 substituted a requirement that rules promulgated by the state fire marshal "be reasonable and calculated to effect the purpose of this act" for a requirement that rules promulgated by the state fire marshal "establish minimum standards of fire protection requirements" in subsection (1), and added subsection (4).

Chapter 366 of Laws 1969 inserted subsection (2) and renumbered former subsection (2) as subsection (3).

82-1202.2. Notice of public hearing—publication—adoption of rules—effective date. Notice of the time and place of public hearing required by section 82-1202, R.C.M. 1947, shall be published at least five (5) times in at least two (2) newspapers of general circulation throughout the state. The last published notice shall appear not less than fifteen (15) days prior to the public hearing. A copy of the notice of public hearing shall be furnished by mail to any person who files his address with the fire marshal together with a request for such notification. Any person may appear before the state fire marshal and present testimony on proposed rules in the manner prescribed by the marshal. Following the public

hearing, the state fire marshal may approve, approve in modified form, or disapprove a proposed rule. The state fire marshal shall specify the date when any new rule or change in an existing rule becomes effective. A new rule or change in an existing rule relating to building and equipment standards covered by the state or a municipal building code is effective upon approval of the state building code council and filing with the secretary of state.

History: En. 82-1202.2 by Sec. 4, Ch. 229, L. 1967; amd. Sec. 26, Ch. 366, L. 1969.

Amendments

The 1969 amendment added the last sentence.

Repealing Clause

Section 27 of Ch. 366, Laws 1969 read "Sections 66-2424, 66-2818, 69-2101 through 69-2103, 69-3701 through 69-3719, and 75-3103, R. C. M. 1947, are repealed."

82-1203, 82-1204. (2737.2, 2738) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 148, L. 1911; Sec. 2, Ch. 124, L. 1929), relating to the appointment of the state fire marshal and to violations of section 82-1202, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1208. (2742) **Special deputy fire marshals—acting fire marshal—fire marshal's employees.** (1) In an emergency, or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed forty dollars ($40) per day plus per diem allowance for expenses and mileage at the same rates specified for state employees.

(3) The fire marshal may appoint assistants and clerical employees to perform duties as specified by the marshal to assist in carrying out the duties assigned him by law.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R. C. M. 1921; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "attorney general" for "commissioner of insurance" in subsection (1); and increased the rate of pay of special deputy fire marshals from $20 to $40 per day.

82-1209. (2743) **Investigation of fires.** (1) The cause, origin, and circumstances of each fire, by which property has been destroyed or damaged, shall be investigated to determine the exact cause and circumstances. The state fire marshal may superintend and direct the investigation if he deems it necessary.

(2) If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation. If it appears that the fire was of suspicious origin, or if there was a loss of human life, the official responsible for the

investigation shall notify the state fire marshal within twenty-four (24) hours, and shall file a written report of the cause with the state fire marshal within ten (10) days.

(3) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the state fire marshal of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the state fire marshal.

(4) Each official responsible for investigating fires shall file a fire incident report on each and every fire with the state fire marshal. Reports shall be on forms, and shall contain information, prescribed by the state fire marshal. These reports shall be sent to the state fire marshal on a weekly basis.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R. C. M. 1921; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "the exact cause and circumstances" for "whether the fire was the result of carelessness or design" in the first sentence of subsection (1); substituted "If the property was insured" for "If it appears that the fire was of suspicious origin, if there was a loss of human life, or if the property loss exceeded one hundred dollars" at the beginning of subsection (3); substituted "state fire marshal" for "official responsible for investigating the fire" in the middle part of subsection (3); added "on forms furnished by the state fire marshal" at the end of subsection (3); deleted "On or before February 15 of each year" from the beginning of subsection (4); substituted "incident report on each and every fire" in the first sentence of subsection (4) for "loss report for the immediately preceding calendar year"; and added the third sentence to subsection (4).

82-1210. (2744) **Repealed.**

Repeal

This section (Sec. 7, Ch. 148, L. 1911), relating to fire marshal's investigations, was repealed by Sec. 14, Ch. 229, Laws 1967.

82-1211. (2745) **Penalty for violation of law.** Any person who fails to comply with the requirements of section 82-1209, R.C.M. 1947, shall be fined not less than twenty-five dollars ($25) nor more than two hundred dollars ($200).

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R. C. M. 1921; amd. Sec. 7, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "Any person who fails to comply with the requirements of section 82-1209, R. C. M. 1947" for "An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter"; and made minor changes in style.

82-1218. (2752) **Entering of buildings for purpose of examination.** The state fire marshal, his deputies and subordinates, the chief of the fire department of each municipality or district where a fire department is established, or the county sheriff where no fire department exists, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R. C. M. 1921; amd. Sec. 8, Ch. 229, L. 1967.

Amendments

The 1967 amendment substituted "municipality or district" for "city or village"

before "where a fire"; substituted "county sheriff" for "mayor of a city or village" before "where no fire"; deleted "or the justice of the peace of a township in territory without the limits of a city or village" before "at all reasonable hours"; and substituted "determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety" for "examination" at the end of the section.

82-1227, 82-1228. (2757, 2758) Repealed.

Repeal

These sections (Secs. 20, 21, Ch. 148, L. 1911), relating to the compensation of fire department officials, were repealed by Sec. 14, Ch. 229, Laws 1967.

82-1230. (2760) Oath of marshal and deputy.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

82-1231. (2761) **Tax on fire insurance premiums for maintenance of state fire marshal's office.** Each insurer authorized to effect insurance risks enumerated in subsection two of section 11-1919, doing business in this state shall pay to the state auditor and commissioner of insurance ex officio, during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of three-fourths of one per cent (¾ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971.

Amendments

The 1969 amendment raised the tax from "one-fourth of one per cent (¼ of 1%)" to "one-half of one per cent (½ of 1%)."

The 1971 amendment increased the tax from one-half of one per cent to three-fourths of one per cent; and made a minor change in phraseology.

CHAPTER 13—GOVERNOR—POWERS—RECORDS—SECRETARY

Section

82-1304.1. Vacancy in office of governor and lieutenant governor.
82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature.
82-1304.3. Successor to serve until next general election.
82-1304.4. Governor and lieutenant governor incapacitated.
82-1304.5. Duties and rights of acting governor.
82-1311. "Governor-elect" defined.
82-1312. Duties of state controller.
82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect.
82-1314. Funds—state controller to request an appropriation.
82-1315. Review of executive branch—report to legislature.

82-1301. (124) Powers and duties of governor.

Compiler's Notes

Sections 23-103 to 23-106 referred to in subdivision 10, were repealed by Sec. 248, Ch. 368, Laws of 1969. For similar provisions in current law, see secs. 23-2901 to 23-2903.

82-1304.1. Vacancy in office of governor and lieutenant governor. (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of section 2 [82-1304.2] hereafter.

History: En. Sec. 1, Ch. 29, L. 1973.

Title of Act

An act to provide for succession to the office of governor to implement article VI, section 6(1) and section 14(7) of the 1972 Montana constitution.

82-1304.2. President of senate, speaker of house unable to assume office of governor—election by legislature. If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor. When the speaker of the house becomes governor, the legislature will meet in joint session, and shall elect a lieutenant governor.

History: En. Sec. 2, Ch. 29, L. 1973.

82-1304.3. Successor to serve until next general election. The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties and emoluments of the respective offices.

History: En. Sec. 3, Ch. 29, L. 1973.

82-1304.4. Governor and lieutenant governor incapacitated. (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

History: En. Sec. 4, Ch. 29, L. 1973.

82-1304.5. Duties and rights of acting governor. An acting governor shall have all the rights, duties and emoluments of the office of governor while he is so acting.

History: En. Sec. 5, Ch. 29, L. 1973.

82-1309. Enemy attack upon United States and governor, etc.

Cross-References

Line of succession extended to legislators, sec. 82-3802.

82-1310. Emergency temporary seat of government—designation.

Cross-References

Moving seat of government after attack, sec. 82-3807.

82-1311. "Governor-elect" defined. As used in this act, unless the context clearly indicates otherwise:

(1) "Governor-elect" means the person elected at a general election to the office of governor who is not the incumbent governor.

History: En. Sec. 1, Ch. 47, L. 1969.

Compiler's Notes

As enacted, this section contained no subdivision (2).

Title of Act

An act to provide for orderly transition of state government after the election of a new governor by providing funds and other necessary assistance for the governor-elect.

82-1312. Duties of state controller. The state controller shall provide the governor-elect and his necessary staff with suitable office space in the capitol building, together with furnishings, supplies, equipment, and telephone service for the period between the general election and the inauguration.

History: En. Sec. 2, Ch. 47, L. 1969.

82-1313. State employees chosen by governor-elect—compensation—employees of the department of administration to assist governor-elect. The governor-elect may obtain the assistance of persons of his own choosing, between the general election and inauguration, and they shall receive reasonable compensation for their services. These persons shall be state employees, but they shall not be subject to any civil service or personnel laws or rules of the state. In addition, the governor-elect may request that the state controller assign one (1) or more employees of the department of administration to assist the governor-elect and his staff in the study and interpretation of information. Employees of the department of administration shall be assigned for the time necessary between the general election and the inauguration.

History: En. Sec. 3, Ch. 47, L. 1969.

82-1314. Funds — state controller to request an appropriation. The funds necessary to carry out the provisions of this act shall be included in the appropriation request of the state controller to the legislative assembly meeting in regular session immediately prior to a general election when a governor will be chosen.

History: En. Sec. 4, Ch. 47, L. 1969.

82-1315. Review of executive branch—report to legislature. (1) The office of the governor shall continuously study, and evaluate the organizational structure, management practices, and functions of the executive branch and of each agency and the governor shall, by executive order or other means within the authority granted to him, take action to improve the manageability of the executive branch.

(2) The governor shall submit a report to each regular legislative session concerning the duties of his office under subsection (1) of this section and his recommendations, if any, for the transfer of functions between agencies, the elimination of unnecessary functions, or other recommendations to improve the manageability of the executive branch.

History: En. 82-1315 by Sec. 1, Ch. 238, L. 1973.

Title of Act

An act requiring the office of the governor to review the executive branch of state government and report to the legislature.

Expiration Date

Section 2 of Ch. 238, Laws 1973 read "This act shall expire after June 30, 1975."

CHAPTER 15—HAIL INSURANCE, STATE BOARD OF

Section
82-1501. State board of hail insurance—creation and powers—insurance, how effected.
82-1506. Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.
82-1512. Duty of agent of the department of revenue—election of benefits of law.
82-1515. Appraisers—appointment—qualifications and duties.
82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
82-1519. Compensation of chairman and officers—report.

82-1501. (350) **State board of hail insurance—creation and powers—insurance, how effected.** (1). * * * [Same as parent volume.]

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the said board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practical, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act. It shall have full charge of said department as herein provided for; it shall prepare blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act, and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith; it shall prepare a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, such form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are by such agents made, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 169, L. 1917; amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. 1, Ch. 141, L. 1921; re-en. Sec. 350, R. C. M., 1921; amd. Sec. 1, Ch. 40, L. 1923; amd. Sec. 58, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" and "agents" for "assessors" in the third sentence of subdivision (2) in order to implement article VIII, section 3 of the 1972 constitution.

82-1506. (351) **Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.**

(1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount required to pay all losses, interest on warrants and costs of administration, and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the state department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax shall not exceed in any one (1) year the sum of one dollar and twenty cents ($1.20) per acre on lands sown to grain crops on nonirrigated lands, and the sum of two dollars and forty cents ($2.40) per acre on irrigated lands, also it shall not exceed one dollar and twenty cents ($1.20) per acre on lands producing hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than sixty cents (60¢) per acre on lands sown to grain crops on nonirrigated lands and one dollar and twenty cents ($1.20) per acre on irrigated lands, and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2). * * * [Same as parent volume.]

(3) The state department of revenue is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county. All insurance levies whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full, and not in semiannual payments, on or before November 30th of each year in which such levies are made.

(4). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 169, L. 1917; amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Ch. 141, L. 1921; re-en. Sec. 351, R. C. M. 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. Sec. 1, Ch. 54, L. 1931; amd. Sec. 2, Ch. 33, L. 1949; amd. Sec. 2, Ch. 200, L. 1953; amd. Sec. 59, Ch. 391, L. 1973.

Amendments
The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (1) and (3).

82-1512. (356) **Duty of agent of the department of revenue—election of benefits of law.** It shall be the duty of the agent of the department of revenue in each county in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917; re-en. Sec. 356, R. C. M. 1921; amd. Sec. 60, Ch. 391, L. 1973.

Amendments
The 1973 amendment substituted "the agent of the department of revenue in each county" for "county assessor" near the beginning of the section in order to implement article VIII, section 3 of the 1972 constitution.

82-1515. (359) **Appraisers — appointment — qualifications and duties.** The state board of hail insurance shall, as soon as practicable, each year appoint a sufficient number of appraisers to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917; amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4, Ch. 141, L. 1921; re-en. Sec. 359, R. C. M. 1921; amd. Sec. 1, Ch. 79, L. 1973.

Amendments

The 1973 amendment substituted "a sufficient number of appraisers" for "three men in each county" in the first sentence of this section.

82-1516. (360) **Appointment of appraisers in case of dissatisfaction with official adjustment.** (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official appraiser then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within ten (10) days after receiving the adjustment offer of the state board in writing. Also it is further provided that the state board of hail insurance may require the posting of a cash bond of ten dollars ($10) with the request for reappraisal of the first adjustment. In cases where the board requires the posting of the ten dollar ($10) bond, the board may retain it if no increase is allowed. If an increase is obtained, the board will return the bond to the claimant. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant may at his option submit the matter to arbitration as herein provided or sue the state board of hail insurance in the district court of the county where the loss occurred within ninety (90) days from the date of receipt of written notice of the second appraisal. Such actions shall be trials de novo and the Montana Rules of Civil Procedure shall apply. If the claimant elects to submit the matter to arbitration he shall then appoint one disinterested person as appraiser, and the official appraiser shall appoint another person as appraiser, and the two shall select a third disinterested person and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923; amd. Sec. 4, Ch. 33, L. 1949; amd. Sec. 1, Ch. 69, L. 1963; amd. Sec. 76, Ch. 147, L. 1963; amd. Sec. 1, Ch. 170, L. 1967.

Amendments

The 1967 amendment added "within ninety (90) days from the date of receipt of written notice of the second appraisal" at the end of the fifth sentence of subsection (1).

82-1519. (363) **Compensation of chairman and officers—report.** It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary in such amount as may be specified by the legislative assembly in the appropriation to the board of hail insurance and all appointed officers and employees under this act shall be allowed the per diem and mileage allowed

state employees. The compensation of all appointed officers and employees of the board shall be fixed by the state board of hail insurance. If the legislative assembly does not specify the maximum salary for the head of the agency, the salary shall be fixed by the state board of hail insurance after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry.

The chairman of the state board of hail insurance shall report as provided in section 2 [82-4002] of this act.

History: En. Sec. 12, Ch. 169, L. 1917; amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 363, R. C. M. 1921; amd. Sec. 12, Ch. 40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929; amd. Sec. 1, Ch. 53, L. 1951; amd. Sec. 1, Ch. 165, L. 1961; amd. Sec. 1, Ch. 188, L. 1965; amd. Sec. 11, Ch. 237, L. 1967; amd. Sec. 38, Ch. 93, L. 1969.

Amendments

The 1967 amendment substituted "in such amount * * * of hail insurance" for "not in excess of six hundred dollars ($600) per month" in the second sentence, and added the last two sentences in the first paragraph.

The 1969 amendment substituted the reporting requirements of section 82-4002 for former provision requiring annual financial reports in the second paragraph.

CHAPTER 17—LIEUTENANT GOVERNOR

Section
82-1702.1. Office of lieutenant governor created.
82-1702.2. Powers of lieutenant governor.
82-1702.3. Duties of lieutenant governor.
82-1703. Compensation—when acting as governor.

82-1701, 82-1702. (130, 131) **Repealed.**

Repeal

Sections 82-1701, 82-1702 (Secs. 390, 391, Pol. C. 1895), relating to the duties and compensation of the lieutenant governor, were repealed by Sec. 6, Ch. 297, Laws 1973. For new law, see secs. 82-1702.1 to 82-1702.3.

82-1702.1. Office of lieutenant governor created. There is created an office of lieutenant governor.

History: En. Sec. 1, Ch. 297, L. 1973.

Title of Act

An act to provide for the office of lieutenant governor implementing article VI, section 1(3) of the 1972 Montana constitution; amending sections 25-501 and 82-1703, R. C. M. 1947; and repealing sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, which deal with the lieutenant governor as president of the senate.

82-1702.2. Powers of lieutenant governor. The lieutenant governor may:

(1) prescribe rules for the administration of the office;

(2) hire personnel for the office and establish policy to be followed by such personnel; and

(3) compile and submit a budget for the office.

History: En. Sec. 2, Ch. 297, L. 1973.

82-1702.3. Duties of lieutenant governor. The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor.

History: En. Sec. 3, Ch. 297, L. 1973.

82-1703. (132) **Compensation—when acting as governor.** When the lieutenant governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time.

History: En. Sec. 392, Pol. C. 1895; re-en. Sec. 152, Rev. C. 1907; re-en. Sec. 132, R. C. M. 1921; amd. Sec. 5, Ch. 297, L. 1973.

Amendments

The 1973 amendment deleted "but during such time he is not entitled, as lieutenant governor, to any other compensation or mileage" from the end of the section.

Repealing Clause

Section 6 of Ch. 297, Laws 1973 read "Sections 82-1701, 82-1702 and 94-5418, R. C. M. 1947, are repealed."

CHAPTER 19—PURCHASING DEPARTMENT AND AGENT

Section
82-1910. Supervision of public printing.
82-1914. Sale of state property.
82-1916. Printing and publications.
82-1917. Requisitions for supplies—manner of letting contracts.
82-1918. Contracts limited to three years—rental contracts—building laws.
82-1922. Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by state officers forbidden—penalty.
82-1924. State contracts to be awarded to lowest responsible resident bidder.
82-1925. Residence defined—domestic corporations.
82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence.
82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects.
82-1927. Restriction on submitting additional bids when working beyond contract time.
82-1928. Excusable delays not considered working beyond contract time.

82-1901. (284) **Creation of state purchasing department and agent.**

Cross-References

Agent's position abolished and functions transferred, sec. 82A-202(2).

Department abolished and functions transferred, sec. 82A-202(1).

82-1906. (289) **Contracts for printing and supplies.**

Cross-References

Printing defined, sec. 19-103.1.

82-1910. (293) **Supervision of public printing.** (1) The state purchasing agent shall supervise and attend to all public printing and shall prevent duplication and unnecessary printing; all forms, blanks, and documents printed for distribution to the departments of state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his library; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

(2) The state controller shall not approve a claim for printing submitted by any state officer, agency, or institution unless:

(a) a purchase order has been prepared and approved by the state purchasing agent prior to ordering the printing; or

(b) written approval has been given by the state purchasing agent to order the printing without preparation of a purchase order.

History: En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1969.

Amendments

The 1969 amendment designated the first paragraph as subsection (1), deleted "the" before "state government," and added subsection (2).

Cross-Reference

Printing defined, sec. 19-103.1.

82-1914. (293.4) **Sale of state property.** The state controller shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of the state government.

All sales of highway equipment shall be by public auction or sealed bids and all proceeds received by the state controller from the sale of all material, supplies, equipment and all other personal property of the state highway commission shall be placed in the earmarked revenue fund to the credit of the highway commission.

History: En. Sec. 4, Ch. 66, L. 1923; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971.

Amendments

The 1971 amendment added the second paragraph, providing that the proceeds from the sale of property of the state highway commission be placed in its earmarked revenue fund.

Effective Date

Section 2 of Ch. 11, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

82-1915. (293.5) **Contracts for supplies of state agencies.**

Service Contract

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding for its award. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-1916. (293.6) **Printing and publications.** The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board, commission, bureau, state institution or department except the printing of the decisions of the supreme court as provided in section 82-2004, and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing.

History: En. Sec. 6, Ch. 66, L. 1923; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969.

Compiler's Notes

Section 82-2004, referred to in the first paragraph of this section, was repealed by Sec. 2, Ch. 305, Laws 1967. For present law dealing with the style and publication of supreme court reports, see sec. 82-2002.

Amendments

The 1967 amendment, in the subparagraph beginning "To the librarian," substituted "two (2) copies of each report" for "forty (40) copies of printed reports and a minimum of four (4) copies of mimeographed or carbon reports"; and deleted the following two paragraphs which read, "The historical society of Montana shall distribute publications so received to the public libraries, and other educational, scientific, library or art institutions of the state, which may apply to be put on the mailing list for all or a portion of the state publications; and to such libraries and other institutions outside this state with which the historical society of Montana may have established exchange relations" and "The historical society of Montana shall transmit to the United States Library of Congress, two (2) copies of every administrative report or study"; and added the last subparagraph.

The 1969 amendment deleted the final three paragraphs concerning the governor's certification of reports for publication and the printing and distribution of such reports.

Repealing Clause

Section 44 of Ch. 93, Laws 1969 read "Sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947, are repealed."

Cross-References

Printing defined, sec. 19-103.1.

State publications distribution center, secs. 44-132 to 44-139.

82-1917. (293.7) **Requisitions for supplies—manner of letting contracts.** State officers, commissioners or boards, or departments, superintendents of state institutions or departments shall tabulate in detail the amount of supplies on hand for any class of merchandise for such period as determined by the state purchasing agent, and the additional supplies needed for a period of time not to exceed one year's supply. The state purchasing agent shall make examination of the amount of supplies on hand and shall determine from such examination and from the statements so furnished him, as in this section provided, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of said state purchasing agent shall be subject to approval of the governor. As soon as the state purchasing agent shall determine, as in this section provided, what kind of supplies and the amount necessary for the state of Montana to purchase for its state offices, boards, commissions, departments or institutions, he shall make such purchases.

All purchases by the state purchasing agent shall be based on competitive bids. On any purchase where the estimated expenditure shall be two thousand dollars ($2,000) or over, sealed bids shall be solicited by mail from each person, firm or corporation who has filed with the state purchasing agent a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing: provided, that

if any person, firm or corporation whose name is listed shall fail to respond to any solicitation for bids, after the receipt of two such solicitations, such listing shall, within the discretion of the state purchasing agent, be canceled: provided, further, that it shall be within the discretion of the state purchasing agent to advertise for such purchases. If bids are solicited through advertising, such advertisement shall be made in at least three newspapers, one of which must be a daily, of general circulation printed within the state, once each week for two (2) consecutive weeks, and such advertisement shall state that sealed proposals will be received by the state purchasing department, up to a time to be mentioned therein, for furnishing supplies for such state offices, boards, commissions, departments or institutions, which notice shall also state that detailed statements of supplies to be furnished are on file at the office of the state purchasing department and subject to inspection, and shall also specify that at a certain time, to be therein mentioned, said proposals will be opened, and contracts awarded to the lowest responsible bidder.

On purchases where the estimated expenditure is less than two thousand dollars ($2,000), bids shall be secured without advertising, but the state purchasing agent shall solicit bids for such supplies by notice sent by mail to prospective suppliers whose names are listed as hereinbefore provided, which notice shall contain the same information as is herein required to be set forth in advertisements.

In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed and marked, "proposals for furnishing supplies," and shall be addressed to the state purchasing agent, Helena, Montana.

At the time set for the opening of bids, said proposals shall be opened in public, and contracts awarded to the lowest responsible bidder. The department shall have the right to reject any and all bids. If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; provided, however, that in such event, the state purchasing agent may, with the approval of the governor, purchase such supplies on the open market if they can be so purchased at a better price.

With any proposal the state purchasing agent may require a certified check on some responsible bank, payable to the treasurer of the state of Montana, equal in amount to five per cent (5%) of the sum of such proposal, as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until contract signed and bond filed and approved, if bond be required. All proposals shall include the delivery of the supplies to the departments and institutions for which they are purchased.

The state officers, superintendents, commissioners, departments or institutions, shall not have the authority to purchase any supplies or material, except on approval of the state purchasing agent.

History: En. Sec. 7, Ch. 66, L. 1923; amd. Sec. 2, Ch. 69, L. 1949; amd. Sec. 1, Ch. 301, L. 1971.

Amendments

The 1971 amendment reduced the number of solicitations required by the first proviso to the second sentence of the second paragraph from three to two; substituted "one of which must be a daily" in the last sentence of the second paragraph for a requirement that all three be dailies; reduced the advertising requirement specified in the last sentence of the second paragraph from three to two weeks; deleted "the first publication to be not less than twenty-two (22) days before the date set for the opening of bids" after "consecutive weeks" in the last sentence of the second paragraph; substituted "may" for "shall" in the second sentence of the fourth paragraph; deleted "ample in quantity * * * intended delivery" from the end of the second sentence of the fourth paragraph; and made minor changes in style.

82-1918. (293.8) **Contracts limited to three years—rental contracts—building laws.** (1) No contracts, except those provided for in subsection (2) of this section, shall be made for a longer period than three (3) years and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

(2) The state purchasing agent subject to the approval of the legislature as part of the long-range building program and subject to nonbinding, public bids if more than one person or company is prepared to enter into such contract may enter into rental contracts for buildings required by the state which provide an option to purchase if the best interest of the state is served by the contract. The contract may provide an option-to-purchase provision subject to the limitation that such option must be exercised within twenty (20) years from the date the contract is executed.

(3) All buildings built or leased or purchased under this act must comply with all laws, safety codes, rules and regulations of the state of Montana.

History: En. Sec. 8, Ch. 66, L. 1923; amd. Sec. 2, Ch. 301, L. 1971; amd. Sec. 1, Ch. 496, L. 1973.

Amendments

The 1971 amendment increased the maximum contract period from one year to three years.

The 1973 amendment designated the language in the former section as subsection (1); inserted "except those provided in subsection (2) of this section" in subsection (1); and added subsections (2) and (3).

82-1922. (293.12) **Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by state officers forbidden—penalty.** No contract or order or any interest therein shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract so transferred, at the option of the state. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state of Montana in the awarding of contracts is hereby prohibited, and the state purchasing agent and state board of examiners shall have the right to declare any contract null and void if they shall find sufficient evidence after a contract has been let that said contract was obtained by any bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state of Montana.

All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. Any person who violates the provisions of this act is guilty of a misdemeanor and shall be fined not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000) and the state of Montana shall have the right at its option to declare any contract in violation of the provisions of this act void ab initio.

History: En. Sec. 12, Ch. 66, L. 1923; amd. Sec. 1, Ch. 43, L. 1973.

Amendments

The 1973 amendment deleted from the second paragraph clauses reading "No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the state of Montana in any capacity whatsoever, shall directly, himself, or by another person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Montana under the provisions of this act"; increased the minimum fine from $100 to $500; added to the end of the section the clause giving the state the option to void contracts in violation; and made minor changes in style.

Repealing Clause

Section 3 of Ch. 43, Laws 1973 read "Section 82-1144, R. C. M. 1947, is hereby repealed."

Effective Date

Section 4 of Ch. 43, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 10, 1973.

82-1924. State contracts to be awarded to lowest responsible resident bidder. In order to provide for an orderly administration of the business of the state of Montana in awarding contracts for materials, supplies, equipment, construction, repair and public works of all kinds, it shall be the duty of each board, commission, officer or individual charged by law with the responsibility for the execution of the contract on behalf of the state, board, commission, political subdivision, agency, school district or a public corporation of the state of Montana, to award such contract to the lowest responsible bidder who is a resident of the state of Montana and whose bid is not more than three per cent (3%) higher than that of the lowest responsible bidder who is a nonresident of this state. In awarding contracts for purchase of products, materials, supplies or equipment such board, commission, officer or individual shall award the contract to any such resident whose offered materials, supplies or equipment are manufactured or produced in this state by Montana industry and labor and whose bid is not more than three per cent (3%) higher than that of the lowest responsible resident bidder whose offered materials, supplies or equipment are not so manufactured or produced, provided that such products, materials, supplies and equipment are comparable in quality and performance. This requirement shall prevail whether the law requires advertisement for bids or does not require advertisement for bids and it shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969.

Amendments

The 1969 amendment substituted "three per cent (3%)" for "two per cent (2%)" before "higher" in the first sentence; inserted the second sentence; substituted "requires" for "required" before "advertisement for bids" in the present third sen-

tence and added "and it shall apply to * * * adopted pursuant thereto" at the end.

Janitorial and Maintenance Services

Although this section provides 2% preference for resident bidders, it also establishes a general policy of requiring competitive bidding, including contracts for janitorial services for capitol complex, and such contracts must be let by competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-1925. Residence defined—domestic corporations. For the purpose of this act the word "resident" shall include actual residence of an individual within this state for a period of more than one (1) year immediately prior to bidding; in a partnership enterprise or an association, the majority of all partners or association members shall have been actual residents of the state of Montana for more than one (1) year immediately prior to bidding; domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents but this qualification may be set aside and a successful bid disallowed where it is shown to the satisfaction of the board, commission, officer or individual charged with the responsibility for the execution of such contract that said corporation is a wholly owned subsidiary of a foreign corporation or that said corporation was formed for the purpose of circumventing the provisions of this act relating to residence. Notwithstanding the foregoing, any individual, partnership or corporation, foreign or domestic and regardless of ownership thereof, whose offered materials, supplies or equipment are manufactured or produced in this state by industry located in Montana and Montana labor shall be deemed to be a resident for the purpose of this act.

History: En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969.

Amendments

The 1969 amendment, in the latter portion of the first sentence, deleted "(a) composed of resident organizers or directors of this state who have no substantial interest or investment in the corporation for which they are acting and that the ownership and control of said company is vested in nonresidents"; deleted item designations (b) and (c); added the second sentence; and made minor changes in style.

82-1925.1. State department of revenue to determine residency of contractor—endorsement upon license—applications for redetermination of residency—furnishing lists—department's determination as prima facie evidence. It shall be the duty of the state department of revenue of the state of Montana, at the time that a public contractor makes application for a license under the provisions of chapter 35, Title 84 of this code, to determine whether or not such contractor is a "resident" of the state of Montana within the meaning of sections 82-1924 and 82-1925. The department shall endorse upon the contractor's license whether or not such contractor is a "resident" as aforesaid. If a contractor is not a "resident" at the time such license is issued, but thereafter qualifies as such, he may apply to the department of revenue for a redetermination of his residency, and, if found to qualify as a "resident," the department shall endorse such fact upon his license, together with the date of such qualification. It shall be the duty of the state department of revenue, upon written request of any board, commission, officer or individual charged by law with the responsibility for the execution of any contract subject to the provisions of section 82-1924 on behalf of the state, board, commission,

political subdivision, agency, school district or public corporation of the state of Montana, to furnish a list of contractors who have qualified as "residents," as aforesaid, to such requesting body. The determination of the department of revenue that a public contractor is or is not a "resident" within the meaning of sections 82-1924 and 82-1925 shall be prima facie evidence of such fact.

History: En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973.

Title of Act

An act providing for the determination by the board of equalization of the state of Montana of whether a bidder on public contracts is a "resident" within the meaning of sections 82-1924 and 82-1925, Revised Codes of Montana, 1947.

Amendments

The 1973 amendment substituted "department" and "department of revenue" for "board" and "board of equalization" throughout the section.

Separability Clause

Section 2 of Ch. 217, Laws 1967 read "If any part of this act shall be held to be unconstitutional or invalid by a court of competent jurisdiction, it is the intent of the legislative assembly that all valid parts that are severable from the invalid part remain in effect."

82-1926. Contract provision for preference to Montana products—failure to comply—federal-aid projects. Each contract awarded by any political subdivision, school district, public corporation or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies and equipment, if such products, materials, equipment and supplies are comparable in price and quality. Further, in this connection, it is the intent of this act that wherever possible products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality and performance, shall be preferred for use in all projects and in all state institutions.

Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation or agency for a period of two (2) years.

The preference herein given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto.

History: En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969.

Amendments

The 1969 amendment rewrote the final paragraph which formerly provided that no preference should be given on contracts where federal aid had been obtained except as provided for by federal laws and that section 82-1157 was not amended or repealed by the act enacting 82-1926.

82-1927. Restriction on submitting additional bids when working beyond contract time. A public contractor, as defined in section 84-3501, R.C.M. 1947, who has been awarded a contract by the state of Montana, or any board, commission or department thereof, or by any board of county commissioners, or by any city or town council, or agency thereof,

for the construction or reconstruction of a public work, and is working beyond the contract time (including any authorized time extensions) shall not submit any additional bids or proposals, nor enter into any additional contract with any public agency of the state of Montana, county, or city thereof, until he has completely executed the contract upon which he is working beyond contract time, and all supplemental agreements thereto.

History: En. Sec. 1, Ch. 141, L. 1967.

Title of Act

An act to provide that a public contractor who is working over the contract time on a previously awarded contract from the state of Montana, or any board, commission or department thereof, or from any board of county commissioners, or from any city or town council, or agency thereof, may not submit any additional bids or proposals to any of the above-mentioned agencies until he has completely executed the present contract upon which he is working beyond contract time; amending section 84-3507, R. C. M. 1947.

82-1928. Excusable delays not considered working beyond contract time. A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an "Act of God."

History: En. Sec. 2, Ch. 141, L. 1967.

CHAPTER 20—REPORTERS OF DECISIONS OF SUPREME COURT—PUBLICATION AND DISTRIBUTION OF REPORTS

Section
82-2002. Duties of reporters.

82-2002. (379) **Duties of reporters.** The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall be made under the supervision of, and pursuant to rules and regulations promulgated by the justices of the supreme court. Reports of all cases shall be furnished to the West Publishing Company for inclusion in their publication, the Pacific Reporter, and to any other private printing or duplicating concern requesting such reports for publication. The board of examiners, on request of the supreme court, shall contract with a publishing house to publish volumes of reports, the style, size and format thereof to be determined by the justices, and such board shall in such event prepare and issue a call for bids and in accordance with the terms and specifications of the call, enter into a contract with the lowest and best bidder.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947; amd. Sec. 1, Ch. 14, L. 1961; amd. Sec. 1, Ch. 305, L. 1967.

Amendments

The 1967 amendment added the last two sentences.

Repealing Clause

Section 2 of Ch. 305, Laws 1967 read "Sections 82-2003, 82-2004, 82-2005 and 82-2006, Revised Codes of Montana, 1947, are hereby repealed."

82-2003 to 82-2006. (380 to 383) **Repealed.**

Repeal

These sections (Secs. 892 to 895, Pol. C. 1895; Secs. 1 to 3, Ch. 1, L. 1925; Sec. 1, Ch. 111, L. 1943; Sec. 1, Ch. 139, L. 1947; Sec. 2, Ch. 14, L. 1961), relating to the style and title of supreme court reports, were repealed by Sec. 2, Ch. 305, Laws 1967.

CHAPTER 22—SECRETARY OF STATE

Section
82-2202. Duties of secretary of state.
82-2203. [Transferred.]
82-2208. Exceptions to application of law.
82-2210 to 82-2212. [Transferred.]

82-2202. (134) **Duties of secretary of state.** In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1 to 8. * * * [Same as parent volume.]

9. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

10. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights and stationery.

11. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

12. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

13. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member of the state board of land commissioners and all other duties required of him by law.

14. To report to the governor, at the time prescribed in section 59-702 a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 59-705.

15. To receive, designate, and record trade-marks as provided in section 85-102.

16. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 82-2007.

17. To report annually to the legislative services division of the legislative council all changes of names received pursuant to section 93-100-5, for publication in the session laws.

18. To report annually to the legislative services division of the legislative council all watercourse name changes received pursuant to section 93-100-9 for publication in the session laws.

History: En. Sec. 401, Pol. C. 1895; re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 134, R. C. M. 1921; amd. Sec. 95, Ch. 199, L. 1965; amd. Sec. 1, Ch. 96, L. 1973. Cal. Pol. C. Sec. 408.

Amendments

The 1973 amendment deleted former subdivision 9 relating to delivery to the printer of laws, resolutions and legislative journals; redesignated former subdivisions 10 to 17, inclusive, as subdivisions 9 to 16; and added new subdivisions 17 and 18.

82-2203. [Transferred.]

Compiler's Notes

Section 82-2203 was redesignated as section 43-711.2 by Sec. 4, Ch. 96, Laws 1973.

82-2204. (136) **Repealed.**

Repeal

Section 82-2204 (Sec. 403, Pol. C. 1895), relating to books distributed by the secretary of state, was repealed by Sec. 2, Ch. 59, Laws 1973; Sec. 8, Ch. 96, Laws 1973.

82-2208. (140) **Exceptions to application of law.** The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, session laws or house and senate journals, nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form.

History: En. Sec. 408, Pol. C. 1895; re-en. Sec. 161, Rev. C. 1907; re-en. Sec. 140, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1973.

Amendments

The 1973 amendment inserted "session laws or house and senate journals."

82-2210 to 82-2212. [Transferred.]

Compiler's Notes

Sections 82-2210 to 82-2212 were redesignated as sections 43-711.3 to 43-711.5 by Secs. 5 to 7, Ch. 96, Laws 1973.

CHAPTER 27—CO-ORDINATOR OF INDIAN AFFAIRS

Section

82-2701. Legislative policy.
82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office.
82-2703. Duties of co-ordinator.
82-2705. Executive and legislative agencies to assist in coal development.

82-2701. Legislative policy. Whereas, a considerable portion of the citizens of the state of Montana are members of the Indian race, and,

Whereas, in the course of the past eighty years these Indian citizens of the state of Montana have been driven from their native valleys and plains and are at present living and residing upon reservations set apart for such purposes by the United States of America, and by virtue of said isolation and supervision by the federal government, great problems of economic and social significance have arisen and presently exist, and that no suitable progress has been made to solve such problems by reason of the fact that the Indians and those who are attempting to aid them in the solution of their problems have never been able to present a co-ordinated and united effort in solving such problems, and

Whereas, it is hereby declared that it is the legislative policy of this state that the best interests of the Indians will be served by the fostering of a program which is designed to establish and place our Indian citizens in a position whereby they will be able to take their rightful place in our society, and assume the rights, duties and privileges of full citizenship, it is therefore necessary that a state office of the co-ordinator of Indian affairs be established so that the problems of the Indians of Montana can be approached and reconciled from a state level in co-operation with the United States of America, and

Whereas, agencies of the federal government retain jurisdiction on Indian reservations in the state of Montana in the administration of economic, social, health, education and welfare programs for Indians, and

Whereas, such Indians as who reside off of said reservations do not generally qualify for participation in such federal programs, and are often prohibited from voting on tribal affairs and for tribal officers, and

Whereas, there are sizeable numbers of off-reservation Indians residing in our state of both enrolled and unofficial tribal descent (landless) whose needs for environmental assistance are borne by state and local agencies, and that these needs are derived from problems shared by all Indians, whether they reside on reservations or not, and in consideration of their desire for official voice and representation in seeking solutions to their problems, and

Whereas, programs of the state of Montana should not duplicate those supported by agencies of the federal government as regards jurisdiction of Indian people, and since state responsibility is effected with off-reservation Indians, and since such Indians require assistance to co-ordinate their affairs with various tribal groups and federal agencies where they have no official recognition,

Then therefore, let it be resolved that the co-ordinator of Indian affairs should assess the problems of all Indians to include those who reside off of known reservations, and who seek ways and means of communicating their opinions and needs to agencies of responsibility, and that the co-ordinator should actively assist such people in organizing such efforts and that he act as representative and spokesman for such organized bodies of Indian people whether reservation or off-reservation classification, whenever such assistance is required.

History: En. Sec. 1, Ch. 203, L. 1951; amd. Sec. 1, Ch. 319, L. 1969.

Amendments

The 1969 amendment made a minor style change at the end of the third paragraph and added the last five paragraphs.

82-2702. Office of state co-ordinator of Indian affairs created—appointment of co-ordinator—term—salary—office. The office of the state co-ordinator of Indian affairs is hereby created. The co-ordinator shall be appointed by the governor from a list of five (5) qualified persons agreed upon by the tribal councils of the respective Indian tribes of the state of Montana. He shall hold such office for a term of four (4) years and shall be paid a salary in such amount as may be specified by the legislative assembly in the appropriation to the co-ordinator of Indian affairs. If the legislative assembly does not specify the maximum salary for the co-ordinator, any increase in the salary of the co-ordinator must be approved by the board of examiners. He shall maintain his office at the state capitol in Helena, Montana.

History: En. Sec. 2, Ch. 203, L. 1951; amd. Sec. 12, Ch. 237, L. 1967; amd. Sec. 2, Ch. 319, L. 1969.

Amendments

The 1967 amendment substituted "salary in such amount * * * and private industry" for "salary of one dollar ($1.00) per year."

The 1969 amendment deleted a former fifth sentence, which read "Before approving any salary increase the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry."

Cross-References

Co-ordinator's office and functions transferred, sec. 82A-903(2).

82-2703. Duties of co-ordinator. It shall be the duty of the state co-ordinator of Indian affairs to do all necessary and proper things to carry out the legislative policy set forth in section 82-2701. He shall solicit rehabilitation loans, educational funds, economic, health, and housing funds from various sources for the purpose of enabling deserving Indians to become self-sufficient. Interest rates on such loans shall not exceed four per cent (4%) and such loans shall be disbursed through various federal programs established for these purposes.

He shall also do everything possible to bring about adequate housing and sanitation for Indians, whether they reside on reservations or not, and will co-ordinate such activities whenever necessary with the department of Indian affairs of the United States, the United States government and the state of Montana.

He shall acquaint himself with the problems confronting the Indians of Montana and he shall advise the legislative and executive branches of the state of Montana of such problems and shall make recommendations for the alleviation thereof. He shall also serve the Montana delegation in the federal Congress as an adviser and intermediary in the field of Indian affairs, and shall act as spokesman for representative Indian organizations and groups, public and private, whenever such support is solicited.

History: En. Sec. 3, Ch. 203, L. 1951; amd. Sec. 3, Ch. 319, L. 1969.

Amendments

The 1969 amendment, in the second sentence of the first paragraph, inserted "educational funds, economic, health, and housing funds" after "rehabilitation loans" and substituted "various federal programs established for these purposes" for "Indian loan associations to be established on the various reservations" at the end of the third sentence; in the second paragraph, substituted "and sanitation * * * whenever necessary" for "on Indian reservations and in general to promote the welfare of our Indian citizens, and in doing these things he will co-ordinate"; and in the third paragraph, added "and shall act * * * whenever such support is solicited."

82-2704. Repealed.

Repeal

Section 82-2704 (Sec. 4, Ch. 203, L. 1951), relating to reports by the state co-ordinator of Indian affairs, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-2705. Executive and legislative agencies to assist in coal development. All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting such assistance on any matter relating to coal development on Indian reservation lands, and may make an appropriate charge therefor.

History: En. Sec. 1, Ch. 221, L. 1973.

Title of Act

An act allowing all agencies of state government to give assistance to tribal councils or their official designees assistance on any matter relating to coal development on Indian lands, and providing for recovery of costs thereof.

CHAPTER 29—AGRICULTURE AND LIVESTOCK COUNCIL

82-2901. Creation of the agriculture and livestock council.

Cross-References

Council abolished, sec. 82A-305(4).

CHAPTER 30—NATURAL RESOURCES AND DEVELOPMENT COUNCIL

Section
82-3001. Creation of interdepartmental advisory council.
82-3002. Organization of the council.
82-3003. Powers and duties of the council.

82-3001. Creation of interdepartmental advisory council. There is hereby created an interdepartmental advisory council, to be known as the council on natural resources and development (hereinafter referred to as the "council"). It shall be composed of the following: The commissioner of state lands and investments, director of the department of state fish and game, state forester, secretary of the grass conservation commission, director of the Montana water resources board, executive secretary of the oil and gas conservation commission, director of the state bureau of mines and geology, state highway engineer, commissioner of agriculture, executive officer of the state board of health, director of planning and economic development, executive secretary of the state soil conservation committee, chairman of the outdoor recreation advisory committee, a member of the water well contractor's examining board, the secretary of the water pollution council, a member of the sanitarians registration council, secretary of the livestock commission, and the executive officer of the livestock sanitary board.

History: En. Sec. 1, Ch. 95, L. 1953; amd. Sec. 4, Ch. 280, L. 1965; amd. Sec. 1, Ch. 230, L. 1967; amd. Sec. 1, Ch. 269, L. 1969; amd. Sec. 1, Ch. 85, L. 1971.

Amendments

The 1967 amendment substituted "director of the department of state fish and game" for "state game warden"; substituted "director of the Montana water resources board" for "a person designated by the state water conservation board"; substituted "the oil and gas conservation commission" for "the oil conservation board"; deleted "and" after "geology"; added "commissioner of agriculture * * * soil conservation committee" at the end of the section; and made a minor change in punctuation.

The 1969 amendment added "chairman of the outdoor recreation advisory committee * * * sanitarians registration council" at the end.

The 1971 amendment added the secretary of the livestock commission and the executive officer of the livestock sanitary board to the council.

Cross-References

Council abolished, sec. 82A-1511(1).

82-3002. Organization of the council. The council shall organize within thirty (30) days after this act shall take effect by the election of a secretary and such other officers as it may deem necessary; the director of the Montana water resources board shall be the permanent chairman of the council. Thereafter, it shall hold meetings at least once every sixty (60) days at the seat of government in Helena, Montana, and shall hold additional meetings if and when the governor shall require it to do so. Notice of the meetings shall be given to the governor and representatives of the press by the secretary of the council.

History: En. Sec. 2, Ch. 95, L. 1953; amd. Sec. 2, Ch. 269, L. 1969.

Amendments

The 1969 amendment, in the first sentence, deleted "chairman" before "secretary" and added "the director * * * shall be permanent chairman of the council"; in the second sentence, substituted "meetings at least once every sixty (60) days" for "quarterly meetings" after "it shall hold"; and added the last sentence.

82-3003. Powers and duties of the council. The duties of the council shall be:

(a) and (b). * * * [Same as parent volume.]

(c) The preparation of reports and recommendations in regard to matters which the governor shall bring to their attention or which, in their judgment, ought to be brought to the attention of the governor.

(d) At each regular meeting of the council, each member of the council shall make a written summary report of the programs or activities of his state agency with regard to water problems in the state. A copy of each report shall be delivered to the governor and to the secretary of the council prior to its regular meetings.

(e) Said meetings shall be open to interested members of the legislature.

(f) Immediately following each meeting, the secretary of the council shall prepare summary minutes and send copies to each member and to the governor.

History: En. Sec. 3, Ch. 95, L. 1953; amd. Sec. 3, Ch. 269, L. 1969.

Amendments

The 1969 amendment substituted "governor shall bring" for "governor may bring" in subdivision (c); and added subdivisions (d) through (f).

CHAPTER 31—STATE AGENCY FOR SURPLUS PROPERTY

82-3105. Superintendent of public instruction, etc.

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

CHAPTER 32—STATE RECORDS

Section
82-3207. Declaration of public policy as to preservation of state records.
82-3208. State archives created—appointment of archivist—duties and compensation.
82-3209. Archivist to preserve noncurrent records of permanent value.

82-3207. Declaration of public policy as to preservation of state records. The legislative assembly declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state affairs, the state should preserve its noncurrent records of permanent value for study and research.

History: En. Sec. 1, Ch. 108, L. 1969.

Title of Act

An act creating a state archives in the Montana historical society; providing for appointment of a state archivist to preserve noncurrent records of permanent value to the state and to assist state officers and agencies in records management.

82-3208. State archives created—appointment of archivist—duties and compensation. There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state and for records management. The director of the Montana historical society shall appoint a state archivist who serves at the pleasure of the director,

define his duties, and fix his compensation with the approval of the board of trustees of the Montana historical society.

History: En. Sec. 2, Ch. 108, L. 1969.

Cross-References

Director's functions continued, sec. 82A-504.

82-3209. Archivist to preserve noncurrent records of permanent value. The state archivist shall preserve noncurrent records of permanent value. Upon request, he shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government with due regard to the functions of the officers and agencies involved.

History: En. Sec. 3, Ch. 108, L. 1969; amd. Sec. 1, Ch. 41, L. 1973.

Amendments

The 1973 amendment deleted "and shall establish and administer an active, continuing program for the economical and efficient management of state records" from the end of the first sentence.

CHAPTER 33—DEPARTMENT OF ADMINISTRATION

Section
82-3303. Divisions within department.
82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities.
82-3314. Definitions of building and construction.
82-3316. Authority to construct buildings.
82-3317. Supervision of construction of buildings.
82-3319. Appointment of architects and consulting engineers.
82-3323. Division of communications created—appointment of administrator.
82-3324. Qualifications of administrator of communications.
82-3325. Powers and duties of division of communications.
82-3327. Transfer of funds, equipments, facilities, and employees.
82-3328. Rights and privileges of employees transferred to division.
82-3329. Bases of director's decisions.
82-3330. Co-operation with other government agencies not limited.
82-3331. Exemption of law enforcement communications system—exception.

82-3301. Title and purpose of act.

Cross-References

Department abolished and functions transferred, sec. 82A-202(1).

82-3303. Divisions within department. The department shall consist of the following divisions:

(1) to (4). * * * [Same as parent volume.]

(5) Budget

(6) Data processing

(7) Management systems

Each division shall be administered by a division head who shall be appointed by, and serve at the pleasure of the controller.

History: En. Sec. 3, Ch. 271, L. 1963; amd. Sec. 2, Ch. 101, L. 1969; amd. Sec. 1, Ch. 313, L. 1971.

Amendments

The 1969 amendment added "(5) Budget" to the list of divisions.

The 1971 amendment added "(6) Data processing" and "(7) Management systems" to the list of divisions.

Cross-References

Division of communications created, sec. 82-3323.

82-3306. Supervision of mailing, data processing, duplicating, copying, and automatic typing facilities. (1) The controller shall maintain and supervise any central mailing, data processing, duplicating and copying facilities for state agencies in the capitol area. Cost records shall be maintained and agencies shall be billed for services received.

(2) The controller shall establish regulations governing the procurement and utilization of data processing equipment, programs and data processing communication networks, duplicating and copying equipment, and equipment generally prescribed for automatic typing. The regulations of the state controller shall be formulated with the advice of a committee consisting of a representative of the board of regents, a representative of the state highway commission, and two (2) members appointed by the other two, and one (1) of the appointed members shall have special knowledge or experience with data processing equipment and one (1) shall have special knowledge or experience with the other named office equipment. Within these regulations the controller shall supervise the procurement and location of the herein named equipment for all state agencies.

History: **En. Sec. 6, Ch. 271, L. 1963; amd. Sec. 1, Ch. 298, L. 1967; amd. Sec. 3, Ch. 101, L. 1969; amd. Sec. 2, Ch. 313, L. 1971.**

Amendments

The 1967 amendment numbered the original paragraph of the section "(1)"; and added subsection (2).

The 1969 amendment deleted "the budget director" after "committee consisting of" and substituted "two" for "three" after "members appointed by the other" in the second sentence of subsection (2).

The 1971 amendment inserted "data processing, duplicating and copying" in the first sentence of subsection (1); added the second sentence to subsection (1); inserted "and utilization" and "programs and data processing communication networks" in the first sentence of subsection (2); and deleted "other than the department of public instruction" from the end of the last sentence of subsection (2).

Cross-References

Advisory committee abolished, sec. 82A-213(1).

82-3309. Custodial care of capitol buildings and grounds.

Competitive Bidding

Contract to provide janitorial services, maintenance service and supplies for capitol complex required competitive bidding. State ex rel. Great Falls Mr. Klean v. Montana State Board of Examiners, 153 M 220, 456 P 2d 278.

82-3314. Definitions of building and construction. In sections 82-3315 to 82-3321, with the exception of 82-3317(2),

(1) to (3). * * * [Same as parent volume.]

History: **En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973.**

Amendments

The 1973 amendment added "with the exception of 82-3317 (2)," to the preliminary clause.

82-3315. Preparation of building programs, etc.

Cross-References

Controller's office abolished and functions transferred, sec. 82A-202 (2).

82-3316. Authority to construct buildings. (1) Except as provided in subsection (2) of this section, a building costing more than twenty-five thousand dollars ($25,000) may not be constructed without the consent of

the legislative assembly. When a building costing more than twenty-five thousand dollars ($25,000) is to be financed in such a manner as not to require legislative appropriation of moneys, such consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in section 75-216, if they are to be financed wholly from the revenues therein described.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private moneys, if the construction of such a building will not result in any new programs.

History: En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967.

Compiler's Notes

Section 75-216, referred to in subdivision (2) (b) of this section, was repealed by Sec. 63, Ch. 2, Laws 1971. Similar provisions are now contained in sec. 75-8503.

Amendments

The 1967 amendment substituted "may" for "shall" after "such consent" near the end of subsection (1); substituted "Montana university system" for "university of Montana" near the beginning of subsection (2)(b); substituted "revenue producing facilities referred to in section 75-216" for "residence halls, dormitories, apartments and other student housing facilities; dining rooms and halls and other food service facilities; and student union building and facilities" in subsection (2)(b); and added "if they are to be financed wholly from the revenue therein described" at the end of subsection (2)(b).

Effective Date

Section 3 of Ch. 13, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 2, 1967.

82-3317. Supervision of construction of buildings. (1) For the construction of a building costing more than ten thousand dollars ($10,000.00) the state controller shall:

(a) to (e). * * * [Same as parent volume.]

(f) Concur in construction projects where the proposed cost is less than ten thousand dollars ($10,000.00), but more than three thousand dollars ($3,000.00), provided that before any contract is approved for construction, alteration or improvement no less than three (3) separate informal bids shall be procured from bona fide contractors duly licensed as such in the state of Montana.

(g) Not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars ($3,000.00).

(2) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping and furnishing during construction, repair or alteration. These services shall be provided at a cost to be contracted for between the department of adminstration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(3) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section.

History: En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973.

Amendments

The 1969 amendment added subdivisions (f) and (g) to subsection (1).

The 1973 amendment inserted a new subdivision (2) and redesignated former subdivision (2) as (3).

82-3318. General powers and duties of controller.

Cross-References

Advisory council abolished, sec. 82A-213(2).

82-3319. Appointment of architects and consulting engineers. The state controller shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled or renovated by the state of Montana, its boards, institutions and agencies, from a list of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done. Such appointment shall be subject to the approval of the state board of examiners.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973.

Amendments

The 1973 amendment added "from a list of three (3) architects or consulting engineers proposed by the state board, institution or agency where the work is to be done" to the end of the first sentence.

Cross-References

Board of examiners continued in department of administration, sec. 82A-206.

82-3323. Division of communications created—appointment of administrator. There is created the division of communications in the department of administration. The state controller shall appoint an administrator for the division of communications, subject to the approval of the governor, and subject to the rules and regulations governing all state employees. The administrator for communications may employ and fix the compensation of such additional personnel as may be necessary.

History: En. Sec. 1, Ch. 230, L. 1971.

Title of Act

An act creating a division of communications in the department of administration; providing for the appointment of an administrator for the division; providing for the powers and duties of the division; providing for the implementation of this act; providing that this act shall not affect the rights and privileges of employees transferred to the division.

82-3324. Qualifications of administrator of communications. The administrator over the division of communications shall have technical training in the field or possess a bachelor's degree from an accredited college or university and shall have four years of progressively responsible experience in the field of communications or its equivalent.

History: En. Sec. 2, Ch. 230, L. 1971.

82-3325. Powers and duties of division of communications. The division of communications is hereby authorized and directed:

(1) To provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information and other forms of communication to and from distant points. The division of communications shall prescribe adequate rules and regulations for the use of any communications equipment and facilities now in use or hereafter made available.

(2) To exercise general supervision over all existing communications systems for all agencies of state government.

(3) To plan, review and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the division shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(4) To approve standards and procedures for selection, acquisition and operation of communication equipment.

(5) To insure that all communications equipment is properly maintained. The division is authorized to contract the equipment maintenance if it is in the state's best interest. The division shall maintain cost records and bill agencies for services rendered.

(6) To provide assistance to the legislature, governor and state agencies relative to state and interstate communication matters.

(7) To provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions as the division may establish.

(8) To accept federal funds granted by Congress or by executive order for all or any purposes of this act, as well as gifts and donations from individuals and private organizations or foundations.

(9) To accept and provide for the technical transmission of programs provided by the division of educational television.

History: En. Sec. 3, Ch. 230, L. 1971.

82-3326. Repealed.

Repeal

Section 82-3326 (Sec. 4, Ch. 230, L. 1971), relating to the advisory council on communications, was repealed by Sec. 1, Ch. 164, Laws 1973.

82-3327. Transfer of funds, equipments, facilities, and employees. In order to provide for the orderly implementation of this act and to provide an economical, efficient, and effective system of communications for the state, the department of administration may order such transfer of appropriated funds, custody and control of equipment and facilities, and employees to the division of communications as may be necessary to carry out the purposes of this act.

History: En. Sec. 5, Ch. 230, L. 1971.

82-3328. Rights and privileges of employees transferred to division. The provisions of this act shall in no manner affect the rights or privileges of any employee transferred to the division of communications under the

public employees retirement system, the group insurance plan, or personnel system.

History: En. Sec. 6, Ch. 230, L. 1971.

82-3329. Bases of director's decisions. It is incumbent on the director to base all decisions pertinent to Montana's state communication services on the factors of cost, quality of service, availability of service and ability to maintain the system.

History: En. Sec. 7, Ch. 230, L. 1971.

82-3330. Co-operation with other government agencies not limited. This act shall not be construed so as to prohibit or limit a state agency from availing itself of connection to and co-operation with other state and federal agencies for the purpose of communications and information gathering and distributing services.

History: En. Sec. 8, Ch. 230, L. 1971.

82-3331. Exemption of law enforcement communications system—exception. The provisions of this act shall not apply to the law enforcement communications system, or its successor at law, except as to the provisions dealing with the purchase, maintenance and allocation of communication facilities; however, the law enforcement communications committee, or its successor at law, shall co-operate with the division of communications to co-ordinate the communications networks of the state.

History: En. Sec. 9, Ch. 230, L. 1971.

CHAPTER 35—COMMISSION ON PROBLEMS OF AGING

Section
82-3501. Commission created.
82-3502. Composition of commission—appointment and terms of members.
82-3503. Quorum of commission—officers—meetings.
82-3504. Functions of commission.
82-3505. Grants and gifts to commission—deposit and availability.

82-3501. Commission created. There is hereby created the commission on aging, hereafter called "the commission."

History: En. Sec. 1, Ch. 73, L. 1965; amd. Sec. 1, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission on aging" for "committee on problems of aging" near the beginning of the section and substituted "commission" for "committee" at the end of the section.

Cross-References

Commission abolished and functions transferred, sec. 82A-1902(3).

Quasi-judicial functions of commission transferred to board of social and rehabilitation appeals, sec. 82A-1907(3).

82-3502. Composition of commission—appointment and terms of members. The commission shall consist of fifteen (15) members appointed by the governor as follows: One (1) member each from the following offices: state board of health, department of public institutions, Montana medical association, public employees' retirement system, department of public welfare, Montana nurses association, Montana nursing home association,

the legislative assembly. Seven (7) citizen members shall be selected on the basis of active interest, experience and ability, none of whom shall be employees of the state. Five (5) commission members shall be appointed initially for terms of one (1) year; five (5) shall be appointed initially for terms of two (2) years, five (5) shall be appointed initially for terms of three (3) years. An appointment to replace a member whose term has expired shall be for three (3) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term.

History: En. Sec. 2, Ch. 73, L. 1965; amd. Sec. 2, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3503. Quorum of commission—officers—meetings. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice-chairman, a secretary and such other officers as it deems necessary. The commission shall meet on call of the chairman of the commission or the governor.

History: En. Sec. 3, Ch. 73, L. 1965; amd. Sec. 3, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3504. Functions of commission. The commission shall: 1. to 4. * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "The commission" for "The committee" at the beginning of the section.

82-3505. Grants and gifts to commission—deposit and availability. The commission may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the same so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the commission.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967.

Amendments

The 1967 amendment substituted "commission" for "committee" wherever it appears in the section.

82-3506. Repealed.

Repeal

Section 82-3506 (Sec. 6, Ch. 73, L. 1965; Sec. 6, Ch. 12, L. 1967), relating to the report of the commission on aging, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

CHAPTER 36—MONTANA ARTS COUNCIL

Section
82-3601. Montana arts council created—purposes.
82-3602. Appointment of council members—qualifications.
82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members.
82-3604. Executive committee—functions.

82-3605. Employment of officers and employees—compensation.
82-3606. Duties of council.
82-3607. Gifts and donations received—deposit and use.
82-3608. Contracts for services and co-operative endeavors.
82-3609. Fund-raising drives—deposit and use of proceeds.

82-3601. Montana arts council created—purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

History: En. Sec. 1, Ch. 2, L. 1967.

Title of Act

An act creating the Montana arts council and prescribing its powers and duties.

Cross-References

Council continued in department of education, sec. 82A-508.

82-3602. Appointment of council members—qualifications. The Montana arts council shall consist of fifteen (15) members appointed by the governor, by and with the consent of the senate. In so far as possible, the governor shall appoint members from the various geographical areas of the state who have a keen interest in one or more of the arts and a willingness to devote time and effort in the public interest without compensation.

History: En. Sec. 2, Ch. 2, L. 1967.

82-3603. Terms of council members—chairman and vice-chairman—vacancies—expenses of members. The term of office of each member shall be five (5) years; provided, however, that of the members first appointed, five (5) shall be appointed for terms of one (1) year, five (5) for terms of three (3) years, and five (5) for terms of five (5) years. The governor shall designate a chairman and a vice-chairman from the members of the council to serve as such at the pleasure of the governor. The chairman shall be the chief executive officer of the council. Other than the chairman, no member of the council who serves a full five (5) year term shall be eligible for reappointment during a one (1) year period following the expiration of his term. Each vacancy shall be filled for the balance of the unexpired term in the same manner as the original appointment. The members of the council shall not receive any compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties as members of the council.

History: En. Sec. 3, Ch. 2, L. 1967.

82-3604. Executive committee—functions. The council may select an executive committee of five (5) members and delegate to the committee such functions in aid of the efficient administration of the affairs of the council as the council deems advisable.

History: En. Sec. 4, Ch. 2, L. 1967.

82-3605. Employment of officers and employees—compensation. The chairman may employ, and at pleasure remove, administrative officers and other employees as may be needed and fix their compensation within the amounts made available for such purposes.

History: En. Sec. 5, Ch. 2, L. 1967.

82-3606. Duties of council. The duties of the council shall be:

(1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein;

(2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state;

(3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources;

(4) To encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) To report as provided in section 2 [82-4002] of this act.

History: En. Sec. 6, Ch. 2, L. 1967; amd. Sec. 39, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for former provision requiring reports to governor and legislature in even-numbered years.

82-3607. Gifts and donations received—deposit and use. The council may acquire, accept, receive, dispose and administer in the name of the council any gifts, donations, properties, securities, bequests and legacies that may be made to it. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the National Foundation on the Arts.

History: En. Sec. 7, Ch. 2, L. 1967.

82-3608. Contracts for services and co-operative endeavors. The council may contract with individuals, organizations and institutions for services or co-operative endeavors furthering the objectives of the council's programs.

History: En. Sec. 8, Ch. 2, L. 1967.

82-3609. Fund-raising drives—deposit and use of proceeds. The council may engage in such fund-raising drives and public contribution campaigns as will contribute to its continued development and support. All revenues received in such manner shall be deposited in the earmarked revenue fund of the state treasury and may not be used for any purposes other than the improvement, development and operation and programs of the council.

History: En. Sec. 9, Ch. 2, L. 1967.

Effective Date

Section 10 of Ch. 2, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved January 19, 1967.

CHAPTER 37—PLANNING AND ECONOMIC DEVELOPMENT ACT

Section
82-3701. Short title.
82-3702. Declaration of necessity and public policy.
82-3703. Planning and economic development commission.
82-3704. Executive head of department—appointment—compensation.
82-3705. Functions of department.
82-3706. Contracts and agreements for projects and programs—co-operation with other agencies.
82-3707. Administrators of sections of department—appointment of personnel.
82-3709. Planning board abolished—records, property and moneys transferred.

82-3701. Short title. This act shall be known and may be cited as the "Montana Planning and Economic Development Act of 1967."

History: En. Sec. 1, Ch. 19, L. 1967.

Title of Act

An act creating a planning and economic development commission and a department of state government to foster planning, growth and diversification of industry and commerce; abolishing the planning board; and repealing sections 89-301 through 89-309, R. C. M. 1947.

82-3702. Declaration of necessity and public policy. It is hereby declared to be a necessity and the public policy of the state of Montana to promote, stimulate and encourage the planning and development of the economy of the state in order to provide for the social and economic prosperity of its citizens. Such promotion and development of industry, commerce, agriculture, labor and natural resources of the state requires that cognizance be taken of the continuing migration of people to the urban areas in search of job opportunities, and the fact that Montana is making a needed transition to a diversified economy. Community planning, greater diversification and attraction of additional industry, accelerated development of natural resources, expansion of existing industry, creation of new uses for agricultural products, greater emphasis on scientific research, development of new markets for the products of the state and the attainment of a proper balance in the over-all economic base are all necessary in order to create additional employment opportunities, increase personal income and promote the general welfare of the people of this state. The planning and economic development commission and department hereinafter created shall be regarded as performing a governmental function in carrying out the provisions of this act.

History: En. Sec. 2, Ch. 19, L. 1967.

82-3703. Planning and economic development commission. There is hereby created a department of state government to be known as the "department of planning and economic development," of which the governing board shall be a commission designated as the "planning and development commission." The commission shall consist of seven (7) members, and the governor shall be an ex officio member thereof. The governor shall appoint a chairman of the commission as provided hereafter. The

other five (5) members of the commission shall be appointed by the governor, shall represent various community and economic interests, and shall be residents and qualified electors of the state. On or before the effective date of this act, the governor shall appoint one (1) member whose term of office shall expire on May 1, 1968, one (1) member whose term of office shall expire on May 1, 1969, one (1) member whose term of office shall expire on May 1, 1970, one (1) member whose term of office shall expire on May 1, 1971, and one (1) member whose term of office shall expire on May 1, 1972. Except appointments to fill unexpired terms, each appointment thereafter shall be for a period of five (5) years. Members of the commission may be removed by the governor, and any vacancy caused by death, removal, disqualification or resignation shall be filled by appointment as hereinabove provided.

The commission shall select from its membership a vice-chairman, a secretary, and such other officers as it may determine to be necessary. The commission shall adopt such rules and regulations for the discharge of its duties as it may from time to time deem necessary, and each member except the governor and the chairman of the commission shall receive the sum of fifteen dollars ($15.00) per day for each day actually engaged in the performance of the duties of office, and shall be reimbursed for actual and necessary expenses incurred in the performance of the duties of office. The commission is empowered to exercise general supervision of the department, shall establish policy, and shall approve programs undertaken.

History: En. Sec. 3, Ch. 19, L. 1967.

Cross-References

Department and commission abolished and functions transferred, sec. 82A-902(2).

82-3704. Executive head of department—appointment—compensation. The executive head of the department is the chairman of the commission, who shall be appointed by the governor, with the consent of the senate, and shall hold office at the pleasure of the governor. The chairman of the commission shall receive such compensation as is fixed by the legislature.

History: En. Sec. 4, Ch. 19, L. 1967.

82-3705. Functions of department. The department shall serve as the agency of state government in developing the full potential of the state's human and natural resources. To this end the department shall perform the following functions:

(A) State Planning.

(1) Develop and adopt a comprehensive plan for the physical development of the state of Montana.

(2) Make such economic and social studies as may be needed to accomplish the purposes of this act.

(3) Co-ordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana.

(4) Assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors which influence the develop-

ment of new and existing economic enterprises, including taxes and the regulation of industry.

(5) Provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development which may be relieved by state action.

(6) Locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance, and make recommendations for protecting and preserving such sites.

(7) Apply for, accept and administer grants from the federal government or other public or private sources to accomplish the objectives of this act, and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states.

(8) Serve as the consultative, co-ordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services and technical aid, which may include land use, demographic and economic studies and surveys, and comprehensive plans.

(B) Community Development.

(1) Co-operate with and provide technical assistance to county, municipal, state and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly productive and co-ordinated development of the communities of the state.

(2) Assist the governor in co-ordinating the activities of state agencies which have an impact on solution of community development problems and implementation of community plans.

(3) Serve as a clearinghouse for information, data, and other materials which may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal, state financial and technical assistance.

(4) Carry out continuing studies and analyses of the problems faced by communities within the state and develop such recommendations for administrative or legislative action as appear necessary. In carrying out such studies and analyses, the department shall pay particular attention to the problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(C) Recreational Development.

(1) Exercise state responsibility for that part of recreational planning and development which is directly related to private investment in recreational facilities.

(2) Assemble and correlate information which may influence the development of recreational enterprises and disseminates the same to persons, firms or corporations with bona fide interest in constructing or maintaining recreational facilities open to the public.

(D) Economic Development.

(1) Provide co-ordinating services to aid state and local groups in the promotion of new economic enterprises and conduct publicity and promotional activities in connection therewith.

(2) Collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial and industrial enterprises within this state.

(3) Serve as the state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups seeking new enterprises.

(4) Aid communities interested in obtaining new business or expanding existing business.

(5) Study and promote means of expanding markets for Montana products.

(6) Encourage and co-ordinate public and private agencies or bodies in publicizing the facilities and attractions of the state.

History: En. Sec. 5, Ch. 19, L. 1967.

82-3706. Contracts and agreements for projects and programs—co-operation with other agencies. The department may contract for consulting services for the purpose of undertaking and conducting planning and study projects. It may make agreements with other state agencies in order to effectuate its own research programs. It may initiate research, but when possible shall make full use of and strengthen the research resources of other state agencies, including the university system. Other state agencies are directed to provide the department with such information as will assist it in carrying out the purposes of this act.

The department shall assist and co-operate with other state agencies and officials, with official organizations of elected officials in the state, with local governments and officials, and with federal agencies and officials, in carrying out the functions and duties of the department.

It may consult with private groups and individuals, and if the department deems it desirable, hold public hearings to obtain information for the purposes of carrying out this act.

History: En. Sec. 6, Ch. 19, L. 1967.

82-3707. Administrators of sections of department—appointment of personnel. Each division or section of the department may be under the management of an administrator, responsible to the chairman of the commission, and such administrators and all subordinate personnel of the department shall be appointed by the chairman of the commission, with the consent of the commission.

History: En. Sec. 7, Ch. 19, L. 1967.

82-3708. Repealed.

Repeal

Section 82-3708 (Sec. 8, Ch. 19, L. 1967), relating to the annual report of the planning and development commission, was repealed by Sec. 44, Ch. 93, Laws 1969. For present law, see secs. 82-4001 and 82-4002.

82-3709. Planning board abolished — records, property and moneys transferred. The state planning board is abolished. All records, property and moneys of the state planning board are transferred to the planning and economic development commission.

History: En. Sec. 9, Ch. 19, L. 1967.

Repealing Clause

Section 10 of Ch. 19, Laws 1967 read "Sections 89-301, 89-302, 89-303, 89-304, 89-305, 89-306, 89-307, 89-308, and 89-309, R. C. M. 1947 are repealed."

CHAPTER 38—POST-ENEMY-ATTACK CONTINUITY IN GOVERNMENT

Section
82-3801. Citation of act.
82-3802. Succession to governorship.
82-3803. Succession to boards of county commissioners.
82-3804. Succession in city or town governing bodies.
82-3805. Succession for city or town executives.
82-3806. Provision for quorum.
82-3807. Moving seat of state government.
82-3808. Moving seat of local government.
82-3809. Duration of operation of act.

82-3801. Citation of act. This act may be cited as "The Post-Enemy-Attack Continuity in Government Act."

History: En. Sec. 1, Ch. 268, L. 1967; amd. Sec. 46, Ch. 100, L. 1973.

Title of Act

An act to provide for post-enemy-attack continuity in government.

Amendments

The 1973 amendment deleted "and is in implementation of section 46, article V of the Montana constitution" from the end of the section.

82-3802. Succession to governorship. Following an enemy attack, the line of succession to the office of governor shall be extended to members of the legislative assembly in the order of their seniority. For purposes of this section the term "seniority" means the member who has served in the legislature for the longest continuous period of time up to and including his current term. If two (2) or more members of the legislative assembly have equal seniority, the line of succession among them shall be from eldest to youngest in age.

History: En. Sec. 2, Ch. 268, L. 1967; amd. Sec. 47, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as set forth in section 16, article VII of the constitution of Montana" after "office of governor" in the first sentence.

82-3803. Succession to boards of county commissioners. In case of a vacancy on any board of county commissioners occurring during or following an enemy attack if the judge or judges of the judicial district in which the vacancy occurs be not available to make the appointment then the district judges of all other judicial districts shall be authorized to make such appointment, provided, however, that of the available judges in the state of Montana that judge who holds court in the county seat closest to the county seat where the vacancy occurs shall be responsible for making the appointment to fill the vacancy.

History: En. Sec. 3, Ch. 268, L. 1967; amd. Sec. 48, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as provided in section 4, article XVI of the Montana constitution" after "make the appointment" near the middle of the section.

82-3804. Succession in city or town governing bodies. In the event that no members of a city or town council or commission are available following an enemy attack then the board of county commissioners of the county in which such city or town is located shall appoint successors to act in place of the unavailable members.

History: En. Sec. 4, Ch. 268, L. 1967.

82-3805. Succession for city or town executives. In the event that the executive head of any city or town is unavailable, following an enemy attack, to exercise the powers and discharge the duties of his office, then those members of the city or town council or commission available shall, by majority vote, choose a successor to act as the executive head of such city or town.

History: En. Sec. 5, Ch. 268, L. 1967.

82-3806. Provision for quorum. If, following an enemy attack, the legislature or any state or local government council, board, or commission is unable to assemble a quorum as defined by the constitution of Montana or by statute then those legislators or members of the council, board, or commission available for duty shall constitute the legislature or board, or commission; and aforesaid quorum requirements shall be suspended; and, where the affirmative vote of a specified proportion of members for the approval of any action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History: En. Sec. 6, Ch. 268, L. 1967.

82-3807. Moving seat of state government. Following an enemy attack in which the seat of state government at Helena has been rendered unsuitable for use in that capacity the seat of state government may be moved to an alternate location within the boundaries of the state of Montana by proclamation of the governor. He shall consider other Montana cities in order of their population in the last federal census, giving consideration to available communications, office space and such other factors as may seem to him pertinent. Such move of the seat of government shall be effective until it is again moved by proclamation of the governor or action by the legislature.

History: En. Sec. 7, Ch. 268, L. 1967.

82-3808. Moving seat of local government. Following an enemy attack in which the seat of local government of any political subdivision of the state shall have been rendered unsuitable for use in that capacity, in the opinion of the governing body of that political subdivision, such seat of government may be moved by said governing body to such other location as they deem most suitable.

History: En. Sec. 8, Ch. 268, L. 1967.

82-3809. Duration of operation of act. The provisions of this act shall become inoperative at the time of the convening of the first legislative assembly following the emergency which originally made such provisions operative.

History: En. Sec. 9, Ch. 268, L. 1967.

CHAPTER 39—TELETYPEWRITER COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT

Section
82-3901. Establishment of communications system—inclusion of other state agencies.
82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties.
82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments.
82-3904. Participation in system by local and other agencies.
82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements.
82-3906. Attorney general's report.

82-3901. Establishment of communications system—inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype, and is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969.

Compiler's Notes

Chapter 145, Laws 1969 made permanent the law enforcement teletypewriter communications system. This chapter is identical to Ch. 1, Ex. Laws 1967 except for the insertion of "permanent" after "authorized to establish a" in section 1 (82-3901).

Title of Act

An act creating a state law enforcement teletypewriter communications system; providing for an administrative committee to administer the provisions of the act; providing for duties of the state attorney general in administering the act; providing for charges to be established and providing for disposition of moneys collected; providing for an appropriation to carry out the provisions of the act.

Amendments

The 1969 amendment inserted "permanent" before "law enforcement teletypewriter communications system" near the beginning of the section.

82-3902. Appointment of communications committee—members—term of office—vacancies—meetings—compensation—duties. To carry out the provisions of the act, the governor shall appoint a state law enforcement teletypewriter communications committee consisting of seven (7) members, each member representing a governmental entity which is participating in the communications system. Membership in the committee shall be as follows:

One (1) county sheriff from a county of the first class.

One (1) county sheriff from a county other than a first class county.

One (1) chief of police from a city of the first class.

One (1) chief of police from a city other than a first class city.

One (1) county commissioner from a county not otherwise represented.

One (1) city mayor from a city not otherwise represented.

One (1) officer or employee of a state department or agency which participates in the communications system.

The term of office of members appointed to the committee shall be as follows: Three (3) of the original appointees shall serve three (3) year terms, such terms to be determined by lot or drawing among the members present at the initial meeting of the committee, and the balance of the members of the committee shall serve for two (2) years each. Vacancies on the committee shall be filled immediately by the governor. The committee shall meet at such times and at such locations as the attorney general may require and may elect officers. Members shall serve without committee compensation since, by the nature of their duties and official capacities, they are full-time, paid, state or subdivision employees subject to compensation and certain travel and per diem allowances in connection with their positions. The committee shall advise the attorney general as to the operation of the state law enforcement teletypewriter communications system, and shall suggest such changes as determined are necessary, and the attorney general shall, within the limits of the funds available under the provisions of this act, make every effort to effectuate the changes suggested, and shall work toward refinement of the system at all levels.

History: En. Sec. 2, Ch. 1, Ex. L. 1967; amd. Sec. 2, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

Cross-References

Committee abolished and functions transferred, sec. 82A-1202(3).

82-3903. Powers of attorney general in carrying out provisions of act—operational charges—assessments. To carry out the provisions of this act, the attorney general is:

(a) Authorized to purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this act, but only after consultation with the committee, and only upon approval of the committee regarding actual physical equipment to be purchased or leased as herein provided.

(b) The attorney general is authorized to employ such personnel as may be necessary to operate such facilities, within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified, but only after approval of the committee.

(c) The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system. Such charge shall be approved by the communications committee and shall be billed monthly to the agencies, and payments made as a result of the billing shall be remitted to the attorney general and shall be deposited by him in a special account in the state treasurer's office, and the state auditor is hereby authorized to draw warrants on this account upon request of the attorney general

when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties. Law enforcement agencies, other than state of Montana or any of its subdivisions, that become ninety (90) days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the committee herein provided shall take the necessary steps to carry out this provision.

(d) A special assessment pro rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie, and this assessment shall be made monthly as is the operational assessment, and the same shall be transmitted and deposited and drawn by warrant as are other warrants as previously provided under (c) above, except that the assessment shall not be levied against the one central station for which the assessment is made. Assessments made under the provisions of this act shall be approved by the committee.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3904. Participation in system by local and other agencies. Any county, city, or other law enforcement agency may, with approval of the committee and the attorney general, connect to the system and participate in it upon payment of, or agreement to pay, those costs established by the committee.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3905. Co-operation with federal law enforcement agencies—attorney general to enter agreements. The attorney general is hereby directed to contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general is hereby authorized to sign agreements with the federal agencies, subject to approval of the communications committee, and any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to the credit of the communication fund and shall be used, if at all possible, to reduce the spending of moneys as herein appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

82-3906. Attorney general's report. The attorney general shall prepare a report in detail covering the operations of the communications network, the actions of the committee, the accounting of all moneys received and

expended, and the need to expand or improve the system, and shall submit such report to the appropriations committee of every legislative assembly at the time funds are requested for the administration of this act.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969.

Amendments

The 1969 amendment made no change in this section.

Appropriation

Section 7 of Ch. 1, Ex. Laws 1967 appropriated money for the 1967-1969 biennium.

CHAPTER 40—ANNUAL REPORTS TO GOVERNOR

Section
82-4001. Definitions.
82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies.

82-4001. Definitions. As used in this act, unless the context clearly indicates otherwise:

(1) "State agency" means any elective official, office, department, board, bureau, or commission which is of the executive branch of state government.

(2) "Elective official" means the superintendent of public instruction, board of railroad commissioners, secretary of state, attorney general, state auditor, and state treasurer.

History: En. Sec. 1, Ch. 93, L. 1969.

Title of Act

An act to establish uniform reporting requirements for all state executive agencies; amending sections 1-202, 3-106, 3-2914, 4-227, 5-902, 12-404, 26-124, 27-306, 32-2409, 41-803, 41-906, 44-403, 46-2306, 60-127, 62-504, 66-109, 66-408 66-513, 66-904, 66-1009, 66-1311, 66-1410, 66-1504, 66-2203, 66-2334, 69-4106, 70-111, 71-209, 75-107, 77-120, 80-1405, 81-1411, 82-111, 82-302, 82-1002, 82-1519, 82-3606, 87-120, 92-118, 94-9824, and 82-1916, R. C. M. 1947; and repealing sections 40-2712, 41-1607, 41-1608, 46-106, 46-242, 66-2106, 72-138, 75-1309, 75-1310, 81-206, 81-1702.4, 82-804.3, 82-2704, 82-3506, and 82-3708, R. C. M. 1947.

82-4002. Annual reports by state agencies—contents—public inspection—governor's duties—pamphlets—copies. (1) Before September 1 of each year, each state agency shall submit a written report to the governor of its activities during the immediately preceding fiscal year.

(2) Each report shall contain information prescribed by the governor describing fully the activities of the state agency. Reports shall contain recommendations from each state agency for improvements in programs administered by it.

(3) State agency reports shall be filed in the governor's office and are open for inspection by any person.

(4) From the reports submitted to him the governor shall:

(a) delete extraneous or duplicated data;

(b) standardize the presentation of data to the extent feasible and desirable;

(c) request pertinent additional information he wishes included in the report;

(d) prepare a report for submission to the legislative assembly before the fifth legislative day of any regular session.

(5) Except as provided in subsection (6) of this section, the governor may authorize the publication of a state agency report in pamphlet form. The report in pamphlet form shall be published and distributed by the state agency responsible for reporting.

(6) An elective official may publish an annual report in pamphlet form, in addition to the report to the governor required by subsection (1) of this section, without permission from the governor.

(7) Copies of each report published as provided in subsections (4), (5) and (6) of this section shall be distributed as follows:

(a) two (2) copies to the secretary of state;

(b) two (2) copies to the legislative council;

(c) two (2) copies to the legislative auditor;

(d) one (1) copy to each member of the legislative assembly;

(e) two (2) copies to the director of the budget;

(f) two (2) copies to the librarian of the state historical society;

(g) at least four (4) copies to the state publications distribution center of the state library and additional copies as requested by the state library;

(h) additional distribution in the discretion of the governor or state agency.

History: En. Sec. 2, Ch. 93, L. 1969; amd. Sec. 1, Ch. 134, L. 1971.

Amendments

The 1971 amendment substituted "each year" for "each even-numbered year" in subsection (1); substituted "fiscal year" for "fiscal biennium" at the end of subsection (1); and substituted "an annual report" for "a biennial report" in subsection (6).

CHAPTER 41—PUBLIC CONTRACTOR'S DEPOSITS FOR WITHDRAWAL OF RETAINED PAYMENTS

Section

82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited.
82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations.
82-4103. Interest or income on obligations to be paid to contractor—coupon bonds.
82-4104. Priority of deductions from retained payments and proceeds of deposited obligation.

82-4101. Contractor may withdraw funds retained by state upon depositing certain obligations with state treasurer—obligations that may be deposited. The contractor under any contract heretofore or hereafter made or awarded by the state of Montana, or any department, agency or political subdivision thereof, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under such contract which are retained by the state of Montana, or any department, agency or political subdivision thereof, pursuant to the terms of such contract provided the contractor shall deposit with the treasurer of the state of Montana (1) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills; or (2) bonds or notes of the state of Montana; or (3) bonds

of any political subdivision of the state of Montana, of a market value not exceeding par, at the time of deposit; or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana and such deposited obligations shall be at least equal in value to the amount so withdrawn from payments retained under such contract.

History: En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971.

Title of Act

An act to allow contractors under contracts with the state of Montana, or any department, agency or political subdivision thereof, to deposit certain governmental obligations with the treasurer of the state of Montana in substitution for that portion of the payments otherwise due to such contractors under state contracts which are retained by the state of Montana, or any department, agency or political subdivision thereof, pursuant to the terms of such state contracts.

Amendments

The 1971 amendment inserted "or certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana" near the end of the section; and made a minor change in phraseology.

82-4102. Treasurer authorized to contract for custodial care and servicing of deposited obligations. The treasurer of the state of Montana shall have the power to enter into a contract or agreement with any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor, after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this act. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this act.

History: En. Sec. 2, Ch. 194, L. 1969.

82-4103. Interest or income on obligations to be paid to contractor—coupon bonds. The treasurer of the state of Montana or any national bank, state bank, trust company or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to section 2 [82-4102] hereof, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation. If deposited in the form of coupon bonds, the treasurer of the state of Montana shall deliver each such coupon as it matures to the contractor.

History: En. Sec. 3, Ch. 194, L. 1969.

82-4104. Priority of deductions from retained payments and proceeds of deposited obligation. Any amount deducted by the state of Montana, or by any department, agency or political subdivision thereof, pursuant to the terms of a contract, from the retained payments otherwise due to the contractor thereunder, shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons or income only from those obligations which remain on deposit after such amount has been deducted.

History: En. Sec. 4, Ch. 194, L. 1969.

CHAPTER 42—ADMINISTRATIVE PROCEDURE ACT

Section
82-4201. Short title.
82-4202. Definitions.
82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules.
82-4203.1. Legislative review of rules.
82-4204. Adoption—amendment or repeal of rules—emergency rules.
82-4205. Filing of rules—effective date of rules.
82-4206. Publication and distribution of rules and notices.
82-4207. Petition for adoption of rules.
82-4208. Judicial notice of rules.
82-4209. Notice—hearing—record.
82-4210. Rules of evidence—official notice.
82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members.
82-4212. Examination of evidence by agency—proposed orders.
82-4213. Final orders—notification.
82-4214. Ex parte consultations.
82-4215. Licenses.
82-4216. Judicial review of contested cases.
82-4217. Appeals.
82-4218. Declaratory rulings by agencies.
82-4219. Declaratory judgments on validity or application of rules.
82-4220. Subpoenas and enforcement—compelling testimony.
82-4221. Representation.
82-4222. Service.
82-4223. Construction and effect.
82-4224. Repeal of inconsistent provisions.
82-4225. Severability.

Title and Definitions

82-4201. Short title. This act shall be known and may be cited as the "Montana Administrative Procedure Act."

History: En. Sec. 1, Ch. 2, Ex. L. 1971.

Title of Act.

An act prescribing uniform procedures for state administrative agencies, including: requirement for adoption of procedural rules; procedures for adoption, amendment or repeal of rules, including emergency rules; filing and publication of rules; judicial notice of rules; notice and hearing requirements for contested cases; procedures for contested case hearings; procedures for decision making in contested cases; judicial review of contested case decisions; declaratory rulings by agencies; declaratory judgments by courts regarding the validity and application of agency rules; subpoenas, subpoena enforcement and compelling testimony for agency proceedings; and right to representation in agency proceedings; to provide an effective date.

82-4202. Definitions. For purposes of this act:

(1) "Agency" means any board, bureau, commission, department, authority or officer of the state government authorized by law to make rules and to determine contested cases, except that the provisions of this act shall not apply to the following:

(a) the legislature and any branch, committee or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency otherwise covered by this act shall not be exempt because the governor has been designated as a member thereof;

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack;

(e) the state board of pardons, except that said board shall be subject to the requirements of section 3 [82-4203] and 5 [82-4205] of this act and its rules shall be published in the Montana administrative code and register;

(f) the supervision and administration of any penal, mental, medical or eleemosynary institution with regard to the admission, release, institutional supervision, custody, control, care or treatment of inmates, prisoners or patients;

(g) the administration and management of educational institutions;

(h) the financing, construction and maintenance of public works.

(2) "Rule" means each agency regulation, standard or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to section 18 [82-4218] of this act;

(c) intra-agency memoranda;

(d) rules relating to the use of public works, facilities, streets and highways, when the substance of such rules is indicated to the public by means of signs or signals;

(e) seasonal rules adopted annually relating to hunting, fishing and trapping when there is a statutory requirement for the publication of such rules, and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(f) rules relating to personnel standards, job classifications or salary ranges for agency employees;

(g) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with section 10 [82-4210] of this act and shall be published in the Montana administrative code and register.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision or public organization of any character other than an agency.

History: En. Sec. 2, Ch. 2, Ex. L. 1971.

Rule Making

82-4203. Rules describing agency organization and procedures—public inspection of rules—model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(b) Adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted or used by the agency in the discharge of its functions.

(d) Upon request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule shall be valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare, as soon as is practicable after the passage of this act, a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of section 3 (1) [82-4203 (1)]. The attorney general shall add to, amend or revise the model rules from time to time as he shall deem necessary for the proper guidance of agencies. The model rules, and additions, amendments or revisions thereto, shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules shall not relieve the agency from following the rule-making procedures required by this act.

History: En. Sec. 3, Ch. 2, Ex. L. 1971.

82-4203.1. Legislative review of rules. (1) The secretary of state shall, on the date the legislature convenes in regular session in 1974, transmit to both the senate and house of representatives one (1) copy of all rules in the Montana administrative code, not including superseded or repealed rules.

(2) The secretary of state shall, on the date the legislature convenes in each regular session after 1974, transmit to both the senate and house of representatives one (1) copy of all rules, which are in the Montana administrative code, adopted or amended by agencies since the convening of the previous regular session.

(3) The legislature may, by joint resolution, repeal rules transmitted to it. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

History: En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973.

Title of Act

An act providing for legislative review of administrative rules.

82-4204. Adoption—amendment or repeal of rules—emergency rules. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall:

(a) Give written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in section 6 (2) [82-4206 (2)] of this act and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least twenty (20) days in advance of the agency's intended action. If any statute shall provide for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case shall the notice period be less than twenty (20) days.

(b) Afford interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either ten per cent (10%) or twenty-five (25) of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency or by an association having not less than twenty-five (25) members who will be directly affected. Contested case procedures need not be followed in hearings held pursuant to this section. Where a hearing is otherwise required by statute, nothing herein shall be deemed to alter that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency, if requested to do so by an interested person either prior to adoption or within thirty (30) days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety or welfare requires adoption of a rule upon fewer than twenty (20) days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than one hundred and twenty (120) days, but the adoption of an identical rule under subsections (1)

(a) and (1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.

(3) No rule adopted after the effective date of this act shall be valid unless adopted in substantial compliance with subsections (1) and (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this act.

(5) Rules shall not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

History: En. Sec. 4, Ch. 2, Ex. L. 1971.

82-4205. Filing of rules—effective date of rules. (1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

(2) Each agency shall file with the secretary of state a certified copy of each rule adopted by it subsequent to the effective date of this act. Each rule shall become effective ten (10) days after publication in the Montana administrative register or code as provided in section 6 [82-4206] of this act, except that:

(a) If a later date is required by statute or specified in the rule, the later date shall be the effective date.

(b) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state, or at a stated date less than ten (10) days following publication in the Montana administrative code or register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to

accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

History: En. Sec. 5, Ch. 2, Ex. L. 1971.

82-4206. Publication and distribution of rules and notices. (1) The secretary of state shall, as soon as is practicable after the effective date of this act, compile, index and publish all rules filed pursuant to this act in a publication which shall be known as the Montana administrative code (herein referred to as the code). The code shall be printed or otherwise duplicated, in looseleaf form. The secretary of state shall revise the code, or any part thereof, as often as he deems necessary.

(2) The secretary of state shall each month compile and publish the Montana administrative register (herein referred to as the register). The register shall contain two (2) sections, a rules section and a notice section.

(a) The rules section of the register shall contain all rules filed with the secretary of state since the compilation and publication of the preceding issue of the register, and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code.

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to section 4 [82-4204] of this act since the compilation and publication of the preceding register, and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.

(c) Each issue of the register shall contain a title page with the name "Montana administrative register," the issue number and date of the register, and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include in the register instructions or information to help the user in correctly making insertions or deletions in the code and to keep the code current.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if the rule in printed or duplicated form is made available on application to the agency, and if the code or register contains a notice stating the general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The secretary of state shall distribute copies of the code, revisions thereto and the register without charge to the following:

Attorney general, one (1) copy;

Clerk of each court of record of this state, one (1) copy;

Clerk of United States district court for the district of Montana, one (1) copy;

Clerk of United States court of appeals for the ninth circuit, one (1) copy;

Each county clerk of this state, for use of county officials and the public, one (1) copy;

State law library, one (1) copy;

State historical society, one (1) copy;

Each unit of the university of Montana, one (1) copy;

Law library of the university of Montana, one (1) copy;

Montana legislative council, three (3) copies;

Library of congress, one (1) copy;

State law library, for such exchanges as it may establish with libraries of other states, not to exceed fifty (50) copies;

Law library of the university of Montana, for such exchanges as it may establish with institutions of higher education in other states, not to exceed fifty (50) copies.

The secretary of state, clerk of each court of record in the state, clerk of each county in the state and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including revisions thereto and additions or changes published in the register. Such persons shall also maintain a file of rule-making notices published in the register during the preceding two (2) years. The secretary of state shall also maintain a permanent register of rule-making notices.

(6) The secretary of state shall make copies of and subscriptions to the code, revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(7) The secretary of state shall determine the cost of supplying copies of the code, revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, revisions thereto and the register.

(8) All fees collected by the secretary of state shall be deposited to the general fund.

History: En. Sec. 6, Ch. 2, Ex. L. 1971.

82-4207. Petition for adoption of rules. An interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 4 [82-4204] of this act.

History: En. Sec. 7, Ch. 2, Ex. L. 1971.

82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this act.

History: En. Sec. 8, Ch. 2, Ex. L. 1971.

Contested Cases

82-4209. Notice — hearing — record. (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) A statement of the time, place and nature of the hearing.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) All pleadings, motions, intermediate rulings.

(b) All evidence received or considered, including a stenographic record of oral proceedings when demanded by a party.

(c) A statement of matters officially noticed.

(d) Questions and offers of proof, objections, and rulings thereon.

(e) Proposed findings and exceptions.

(f) Any decision, opinion or report by the hearing examiner or agency member presiding at the hearing.

(g) All staff memoranda or data submitted to the hearing examiner or members of the agency as evidence in connection with their consideration of the case.

(6) The stenographic record of oral proceedings or any part thereof shall be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription shall be paid by the requesting party.

(7) Findings of facts shall be based exclusively on the evidence and on matters officially noticed.

History: En. Sec. 9, Ch. 2, Ex. L. 1971.

82-4210. Rules of evidence—official notice. (1) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(3) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

History: En. Sec. 10, Ch. 2, Ex. L. 1971.

82-4211. Hearing examiners—conduct of hearings—disqualification of hearing examiners and agency members. (1) An agency shall have authority to appoint hearing examiners for the conduct of hearings in contested cases.

(2) Agency members or hearing examiners presiding over hearings shall be authorized to administer oaths or affirmations; issue subpoenas pursuant to section 20 [82-4220] of this act; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties. All testimony shall be given under oath or affirmation.

(3) A hearing examiner or agency member may at any time disqualify himself. On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case.

History: En. Sec. 11, Ch. 2, Ex. L. 1971.

82-4212. Examination of evidence by agency—proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the

decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties may waive compliance with this section by written stipulation.

History: En. Sec. 12, Ch. 2, Ex. L. 1971.

82-4213. Final orders—notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under section 18 [82-4218], issued after the effective date of this act. No such agency decision or order shall be valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

History: En. Sec. 13, Ch. 2, Ex. L. 1971.

82-4214. Ex parte consultations. Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, shall not communicate with any party or his representative in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

History: En. Sec. 14, Ch. 2, Ex. L. 1971.

82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this act concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the

application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

History: En. Sec. 15, Ch. 2, Ex. L. 1971.

82-4216. Judicial review of contested cases. (1) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this act. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the agency, or if a rehearing is requested, within thirty (30) days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business, or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved and the ground or grounds specified in subsection 7 of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant, or the reviewing court may order, a stay upon terms which it deems proper.

(4) Within thirty (30) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested.

History: En. Sec. 16, Ch. 2, Ex. L. 1971.

82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this act by appeal to the supreme court within sixty (60) days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process;

(1) If appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in

effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for twenty (20) days from the date of filing of the notice.

(2) If appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

History: En. Sec. 17, Ch. 2, Ex. L. 1971.

General Provisions

82-4218. Declaratory rulings by agencies. Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A declaratory ruling, or the refusal to issue such a ruling, shall be subject to judicial review in the same manner as decisions or orders in contested cases.

History: En. Sec. 18, Ch. 2, Ex. L. 1971.

82-4219. Declaratory judgments on validity or application of rules. The validity or application of a rule may be determined in an action for declaratory judgment if it is found that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business, or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

History: En. Sec. 19, Ch. 2, Ex. L. 1971.

82-4220. Subpoenas and enforcement—compelling testimony. (1) An agency conducting any proceeding subject to this act shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party, or to compel the giving of testimony

deemed material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

History: En. Sec. 20, Ch. 2, Ex. L. 1971.

82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this act shall not be construed as requiring an agency to furnish counsel to any such person.

History: En. Sec. 21, Ch. 2, Ex. L. 1971.

82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this act and in proceedings for judicial review thereof, shall be as prescribed for civil actions in the district courts.

History: En. Sec. 22, Ch. 2, Ex. L. 1971.

82-4223. Construction and effect. Nothing in this act shall be deemed to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be deemed to supersede or modify any provision of this act, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

History: En. Sec. 23, Ch. 2, Ex. L. 1971.

82-4224. Repeal of inconsistent provisions. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict.

History: En. Sec. 24, Ch. 2, Ex. L. 1971.

82-4225. Severability. The provisions of this act are severable, and if any part of provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining part of provisions of this act.

History: En. Sec. 25, Ch. 2, Ex. L. 1971.

Effective Date

Section 26 of Ch. 2, Ex. Laws 1971 read "Time of taking effect. This act shall take effect on December 31, 1972, except that pending proceedings shall not be affected."

CHAPTER 43—STATE INSURANCE PLAN AND TORT CLAIMS

Section

82-4301. Short title.
82-4302. Definitions.
82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance.
82-4304. Compliance with state plan required.
82-4305. Apportionment of costs—creation of reserve if deductible plan elected.

82-4306. Political subdivisions.
82-4307. Limits of coverage required.
82-4308. Conditions construed in compliance with act—customary exclusions.
82-4309. Political subdivision tax levy to pay premiums.
82-4310. Governmental entities liable for torts.
82-4311. Filing of claims against state—time of filing.
82-4312. Filing of claims against political subdivisions—time for filing.
82-4313. Contents of claim—agent filing—inaccuracies.
82-4314. Late claims not allowed.
82-4315. Approval or denial of claim—notice.
82-4316. Action after denial of claim.
82-4317. Limitation of actions on claims.
82-4318. Compromise or settlement of claim against political subdivision.
82-4319. Compromise or settlement of claim against state.
82-4320. Jurisdiction of district court—rules of procedure.
82-4321. Venue of actions.
82-4322. Service of summons on state.
82-4323. Recovery against governmental entity bar to recovery against employee.
82-4324. Punitive damages, attorney fees, interest.
82-4325. Recovery from appropriations if no insurance.
82-4326. Political subdivision tax levy to pay claim.
82-4327. Attachment, execution.

82-4301. Short title. This act shall be known and may be cited as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

History: En. Sec. 1, Ch. 380, L. 1973.

Title of Act

An act providing for a comprehensive state insurance plan and tort claims procedure to be known as the "Montana Comprehensive State Insurance Plan and Tort Claims Act."

82-4302. Definitions. As used in this act:

(1) "State" means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university or other instrumentality thereof.

(2) "Political subdivision" means any county, city, municipal corporation, school district, special improvement or taxing district, or any other political subdivision or public corporation.

(3) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(4) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which this act applies in the event of a claim.

(5) "Personal injury" means any injury resulting from libel, slander, malicious prosecution, or false arrest, any bodily injury, sickness, disease or death, sustained by any person and caused by an occurrence, for which the state may be held liable.

(6) "Property damage" means injury or destruction to tangible property, including loss of use thereof, caused by an occurrence, for which the state may be held liable.

(7) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages

because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state of Montana.

History: En. Sec. 2, Ch. 380, L. 1973.

82-4303. Comprehensive insurance plan for state—risks insured—deductible insurance. The department of administration shall be responsible for the acquisition and administration of all the insurance of the state, as defined herein.

The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts not less than the minimum specified in section 7 [82-4307] of this act and shall have the authority to purchase, renew, cancel and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime and fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part. Such a plan shall never have a deductible amount in excess of twenty-five thousand dollars ($25,000) per occurrence, and shall contain provisions allowing for an aggregate deductible amount not to exceed two hundred fifty thousand dollars ($250,000) annually under each type of insurance as enumerated in the preceding paragraph.

History: En. Sec. 3, Ch. 380, L. 1973.

82-4304. Compliance with state plan required. Only the state department of administration may procure insurance under this act except as otherwise provided herein.

All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities and other instrumentalities of the state hereafter called state participants shall comply with this act and the insurance plan developed by the department of administration.

History: En. Sec. 4, Ch. 380, L. 1973.

82-4305. Apportionment of costs—creation of reserve if deductible plan elected. The department of administration shall apportion the costs of all insurance purchased under this act to the individual state participants and the costs shall be paid to the department.

The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a reserve in the amount of two hundred fifty thousand dollars ($250,000), the amount of the total aggregate annual deductible, is created. In each subsequent year, the department shall be authorized to charge a

sufficient amount over the actual cost of the deductible insurance to replenish such reserves.

History: En. Sec. 5, Ch. 380, L. 1973.

82-4306. Political subdivisions. All political subdivisions of the state shall have the authority to procure insurance under this act.

History: En. Sec. 6, Ch. 380, L. 1973.

82-4307. Limits of coverage required. Every policy or contract of insurance purchased by a political subdivision, or the state department of administration for the state as permitted under the provisions of this act, shall provide:

(1) With respect to casualty and liability policies, exclusive of interest and costs, the insurance carrier or carriers shall pay on behalf of the insured governmental entity up to a limit of not less than one million dollars ($1,000,000) in any one (1) occurrence.

(2) With respect to all other types of insurance for the state, the limits of liability and the amounts of insurance shall be determined and set by the department of administration in accordance with the provisions of section 3 [82-4303] of this act.

History: En. Sec. 7, Ch. 380, L. 1973.

82-4308. Conditions construed in compliance with act—customary exclusions. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of this act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid. This section shall not be construed to prohibit any such insurance policy, rider or endorsements from containing standard and customary exclusions of coverages which the department of administration deems to be reasonable and prudent upon considering the availability and the cost of such insurance coverages.

History: En. Sec. 8, Ch. 380, L. 1973.

82-4309. Political subdivision tax levy to pay premiums. Notwithstanding any provisions of law to the contrary, all political subdivisions shall have authority to levy an annual property tax in the amount necessary to pay the premium for insurance as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby; provided, that the revenues derived therefrom may not be used for any other purpose.

History: En. Sec. 9, Ch. 380, L. 1973.

82-4310. Governmental entities liable for torts. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function.

History: En. Sec. 10, Ch. 380, L. 1973.

82-4311. Filing of claims against state—time of filing. All claims against the state arising under the provisions of this act shall be presented to and filed with the secretary of state within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

History: En. Sec. 11, Ch. 380, L. 1973.

82-4312. Filing of claims against political subdivisions—time for filing. All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision within one hundred twenty (120) days from the date of the occurrence from which the claim arose or when the injury should reasonably have been discovered, whichever is later.

History: En. Sec. 12, Ch. 380, L. 1973.

82-4313. Contents of claim—agent filing—inaccuracies. All claims presented to and filed with a governmental entity shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed, together with a statement of the actual residence of the claimant at the time of presenting and filing the claim and for a period of six (6) months immediately prior to the time of the occurrence from which the claim arose. If the claimant is incapacitated and unable to present and file his claim within the time prescribed or if the claimant is a minor or if the claimant is a nonresident of the state and is absent during the time within which his claim is required to be filed, the claim may be presented and filed on behalf of the claimant by any relative, attorney or agent representing the claimant. A claim filed under the provisions of this section shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place, nature or cause of the claim, or otherwise, unless it is shown that the governmental entity was in fact misled to its injury thereby.

History: En. Sec. 13, Ch. 380, L. 1973.

82-4314. Late claims not allowed. No claim or action shall be allowed against a governmental entity unless the claim has been presented and filed within the time limits prescribed by this act.

History: En. Sec. 14, Ch. 380, L. 1973.

82-4315. Approval or denial of claim—notice. The governmental entity shall act within sixty (60) days after the filing of the claim, if at all, and notify the claimant in writing of its approval or denial. A claim shall be deemed to have been denied if at the end of sixty (60) days the governmental entity has failed to approve or deny the claim.

History: En. Sec. 15, Ch. 380, L. 1973.

82-4316. Action after denial of claim. If the claim is denied, a claimant may institute an action in the district court against the govern-

mental entity in those circumstances where an action is permitted by this act.

History: En. Sec. 16, Ch. 380, L. 1973.

82-4317. Limitation of actions on claims. Every claim against a governmental entity permitted under the provisions of this act shall be forever barred unless an action is begun within two (2) years after the claim is filed with the governmental entity.

History: En. Sec. 17, Ch. 380, L. 1973.

82-4318. Compromise or settlement of claim against political subdivision. The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any.

History: En. Sec. 18, Ch. 380, L. 1973.

82-4319. Compromise or settlement of claim against state. The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any.

History: En. Sec. 19, Ch. 380, L. 1973.

82-4320. Jurisdiction of district court—rules of procedure. The district court shall have jurisdiction over any action brought under this act and such actions shall be governed by the Montana Rules of Civil Procedure in so far as they are consistent with this act.

History: En. Sec. 20, Ch. 380, L. 1973.

82-4321. Venue of actions. Actions against the state shall be brought in the county in which the cause of action arose or in Lewis and Clark County. In addition, a resident of the state of Montana may bring an action in the county of his residence.

Actions against a political subdivision shall be brought in the county in which the cause of action arose or in any county where the political subdivision is located.

History: En. Sec. 21, Ch. 380, L. 1973.

82-4322. Service of summons on state. In all actions against the state, the state shall be named the defendant, and the summons shall be served on the secretary of state.

History: En. Sec. 22, Ch. 380, L. 1973.

82-4323. Recovery against governmental entity bar to recovery against employee. Recovery against a governmental entity under the provisions of this act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act or omission gave rise to the claim.

History: En. Sec. 23, Ch. 380, L. 1973.

82-4324. Punitive damages, attorney fees, interest. Governmental entities shall not be liable for punitive damages, attorney fees or interest on any claim allowed under the provisions of this act.

History: En. Sec. 24, Ch. 380, L. 1973.

82-4325. Recovery from appropriations if no insurance. In the event no insurance has been procured by the state to pay a claim or judgment arising under the provisions of this act, the claim or judgment shall be paid from the next appropriation of the state instrumentality whose tortious conduct gave rise to the claim.

History: En. Sec. 25, Ch. 380, L. 1973.

82-4326. Political subdivision tax levy to pay claim. Notwithstanding any provisions of law to the contrary and in the event there are no funds available, the political subdivision shall levy and collect a tax, at the earliest time possible, in an amount necessary to pay a claim or judgment arising under the provisions of this act where the political subdivision has failed to purchase insurance to cover a risk created under the provisions of this act.

History: En. Sec. 26, Ch. 380, L. 1973.

Separability Clause

Section 27 of Ch. 380, Laws 1973 read "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

82-4327. Attachment, execution. No levy of attachment or writ of execution shall issue against any property of a governmental entity for the security or collection of any claim or judgment against any governmental entity under this act.

History: En. Sec. 28, Ch. 380, L. 1973.

CHAPTER 44—WESTERN INTERSTATE NUCLEAR COMPACT

Section
82-4401. Western interstate nuclear compact adopted—text.
82-4402. Board member appointed by governor—compensation.
82-4403. Bylaws and amendments filed with secretary of state.

82-4401. Western interstate nuclear compact adopted—text. The western interstate nuclear compact is entered into and adopted as follows:

WESTERN INTERSTATE NUCLEAR COMPACT

ARTICLE I.

Policy and Purpose

The party states recognize that the proper employment of scientific and technological discoveries and advances in nuclear and related fields and direct and collateral application and adaptation of processes and techniques developed in connection therewith, properly correlated with the other resources of the region, can assist substantially in the industrial progress of the west and the further development of the economy of the region. They also recognize that optimum benefit from nuclear and related scientific or technological resources, facilities and skills requires systematic encouragement, guidance, assistance, and promotion from the party states on a co-operative basis. It is the policy of the party states to undertake such co-operation on a continuing basis. It is the purpose of

this compact to provide the instruments and framework for such a cooperative effort in nuclear and related fields, to enhance the economy of the west and contribute to the individual and community well-being of the region's people.

ARTICLE II.

The Board

(a) There is hereby created an agency of the party states to be known as the "western interstate nuclear board," hereinafter called the board. The board shall be composed of one (1) member from each party state designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the board may provide for the discharge of his duties and the performance of his functions thereon, either for the duration of his membership or for any lesser period of time, by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) The board members of the party states shall each be entitled to one (1) vote on the board. No action of the board shall be binding unless taken at a meeting at which a majority of all members representing the party states are present and unless a majority of the total number of votes on the board are cast in favor thereof.

(c) The board shall have a seal.

(d) The board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The board shall appoint and fix the compensation of an executive director who shall serve at its pleasure and who shall also act as secretary, and who, together with the treasurer, and such other personnel as the board may direct, shall be bonded in such amounts as the board may require.

(e) The executive director, with the approval of the board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The board may establish and maintain, independently or in conjunction with any one or more of the party states, or its institutions or subdivisions, a suitable retirement system for its full-time employees. Employees of the board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment,

supplies, materials and services, conditional or otherwise, from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The nature, amount and conditions, if any, attendant upon any donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to paragraph (g) of this article, together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the board.

(i) The board may establish and maintain such facilities as may be necessary for the transacting of its business. The board may acquire, hold, and convey real and personal property and any interest therein.

(j) The board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The board annually shall make to the governor of each party state, a report covering the activities of the board for the preceding year, and embodying such recommendations as may have been adopted by the board, which report shall be transmitted to the legislature of said state. The board may issue such additional reports as it may deem desirable.

ARTICLE III.

Finances

(a) The board shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Each of the board's requests for appropriations pursuant to a budget of estimated expenditures shall be apportioned equally among the party states. Subject to appropriation by their respective legislatures, the board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the board.

(c) The board may meet any of its obligations in whole or in part with funds available to it under article II, paragraph (h) of this compact, provided that the board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the board makes use of funds available to it under article II, paragraph (h) hereof, the board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) Any expenses and any other costs for each member of the board in attending board meetings shall be met by the board.

(e) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the board.

(f) The accounts of the board shall be open at any reasonable time for inspection to persons authorized by the board, and duly designated representatives of governments contributing to the board's support.

ARTICLE IV.

Advisory Committees

The board may establish such advisory and technical committees as it may deem necessary, membership on which may include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may co-operate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V.

Powers

The board shall have power to:

(a) Encourage and promote co-operation among the party states in the development and utilization of nuclear and related technologies and their application to industry and other fields.

(b) Ascertain and analyze on a continuing basis the position of the west with respect to the employment in industry of nuclear and related scientific findings and technologies.

(c) Encourage the development and use of scientific advances and discoveries in nuclear facilities, energy, materials, products, by-products, and all other appropriate adaptations of scientific and technological advances and discoveries.

(d) Collect, correlate, and disseminate information relating to the peaceful uses of nuclear energy, materials, and products, and other products and processes resulting from the application of related science and technology.

(e) Encourage the development and use of nuclear energy, facilities, installations, and products as part of a balanced economy.

(f) Conduct, or co-operate in conducting, programs of training for state and local personnel engaged in any aspects of:

1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

2. Applying nuclear scientific advances or discoveries, and any industrial commercial or other processes resulting therefrom.

3. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of nuclear energy, materials, products, by-products, installations, or wastes, or to safety in the production, use and disposal of any other substances peculiarly related thereto.

(g) Organize and conduct, or assist and co-operate in organizing and conducting, demonstrations or research in any of the scientific, technological or industrial fields to which this compact relates.

(h) Undertake such nonregulatory functions with respect to non-nuclear sources of radiation as may promote the economic development and general welfare of the west.

(i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to nuclear fields.

(j) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or local laws or ordinances of the party states of their subdivisions in nuclear and related fields, as in its judgment may be appropriate. Any such recommendations shall be made through the appropriate state agency, with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(k) Consider and make recommendations designed to facilitate the transportation of nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related substances, in such manner and under such conditions as will make their availability or disposal practicable on an economic and efficient basis.

(l) Consider and make recommendations with respect to the assumption of and protection against liability actually or potentially incurred in any phase of operations in nuclear and related fields.

(m) Advise and consult with the federal government concerning the common position of the party states or assist party states with regard to individual problems where appropriate in respect to nuclear and related fields.

(n) Co-operate with the atomic energy commission, the national aeronautics and space administration, the office of science and technology, or any agencies successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interest.

(o) Act as licensee, contractor or subcontractor of the United States government or any party state with respect to the conduct of any research activity requiring such license or contract and operate such research facility or undertake any program pursuant thereto, provided that this power shall be exercised only in connection with the implementation of one (1) or more other powers conferred upon the board by this compact.

(p) Prepare, publish and distribute, with or without charge, such reports, bulletins, newsletters or other materials as it deems appropriate.

(q) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of nuclear incidents in the area comprising the party states, to co-ordinate the nuclear incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with nuclear incidents.

The board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with nuclear incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Any nuclear incident plan in force pursuant to this paragraph shall designate the official or agency in each party state covered by the plan who shall co-ordinate requests for aid pursuant to article VI of this compact and the furnishing of aid in response thereto.

Unless the party states concerned expressly otherwise agree, the board shall not administer the summoning and dispatching of aid, but this function shall be undertaken directly by the designated agencies and officers of the party states.

The plan or plans of the board in force pursuant to this paragraph shall provide for reports to the board concerning the occurrence of nuclear incidents and the requests for aid on account thereof, together with summaries of the actual working and effectiveness of mutual aid in particular instances.

From time to time, the board shall analyze the information gathered from reports of aid pursuant to article VI and such other instances of mutual aid as may have come to its attention, so that experience in the rendering of such aid may be available.

(r) Prepare, maintain, and implement a regional plan or regional plans for carrying out the duties, powers, or functions conferred upon the board by this compact.

(s) Undertake responsibilities imposed or necessarily involved with regional participation pursuant to such co-operative programs of the federal government as are useful in connection with the fields covered by this compact.

ARTICLE VI.

Mutual Aid

(a) Whenever a party state, or any state or local governmental authorities therein, request aid from any other party state pursuant to this compact in coping with a nuclear incident, it shall be the duty of the requested state to render all possible aid to the requesting state which is consonant with the maintenance of protection of its own people.

(b) Whenever the officers or employees of any party state are rendering outside aid pursuant to the request of another party state under this compact, the officers or employees of such state shall, under the direction of the authorities of the state to which they are rendering aid, have the same powers, duties, rights, privileges and immunities as comparable officers and employees of the state to which they are rendering aid.

(c) No party state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on their part while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

(d) All liability that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

(e) Any party state rendering outside aid pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries and maintenance of officers, employees and equipment incurred in connection with such requests: provided that nothing herein contained shall prevent any assisting party state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving party state without charge or cost.

(f) Each party state shall provide for the payment of compensation and death benefits to injured officers and employees and the representatives of deceased officers and employees in case officers or employees sustain injuries or death while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within the state by or in which the officer or employee was regularly employed.

ARTICLE VII.

Supplementary Agreements

(a) To the extent that the board has not undertaken an activity or project which would be within its power under the provisions of article V of this compact, any two (2) or more of the party states, acting by their duly constituted administrative officials, may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify the purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate.

No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the board. The board shall give such approval unless it finds that the supplementary agreement or activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed

by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

(d) The provisions to this article shall apply to supplementary agreements and activities thereunder, but shall not be construed to repeal or impair any authority which officers or agencies of party states may have pursuant to other laws to undertake co-operative arrangements or projects.

ARTICLE VIII.

Other Laws and Relations

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the atomic energy commission, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish, affect, or otherwise impair jurisdiction exercised by any officer or agency of a party state, except to the extent that the provisions of this compact may provide therefor.

(c) Alter the relations between the respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the board to own or operate any facility, reactor, or installation for industrial or commercial purposes.

ARTICLE IX.

Eligible Parties, Entry Into Force and Withdrawal

(a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law, provided, that it shall not become initially effective until enacted into law by five (5) states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until two (2) years after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall effect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

(d) Guam and American Samoa, or either of them may participate in the compact to such extent as may be mutually agreed by the board and the duly constituted authorities of Guam or American Samoa, as the case may be. Such participation shall not include the furnishing or receipt of mutual aid pursuant to article VI, unless that article has been

enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction affected. Neither Guam nor American Samoa shall be entitled to voting participation on the board, unless it has become a full party to the compact.

ARTICLE X.

Severability and Construction

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant thereto shall be liberally construed to effectuate the purposes thereof.

History: En. Sec. 1, Ch. 258, L. 1973.

Title of Act

An act adopting the Western interstate nuclear compact.

82-4402. Board member appointed by governor—compensation. The governor shall appoint the board member. He shall report directly to the governor. Such member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member, or his alternate, shall receive no compensation in addition to salary for his services as a member of the board, but shall be reimbursed for actual and necessary expenses incurred in the performance of his duties.

History: En. Sec. 2, Ch. 258, L. 1973.

82-4403. Bylaws and amendments filed with secretary of state. Pursuant to article II, paragraph (j) of the compact, the western interstate nuclear board shall file copies of the bylaws and amendments thereto with the secretary of state.

History: En. Sec. 3, Ch. 258, L. 1973.

TITLE 82A—STATE REORGANIZATION OF EXECUTIVE BRANCH

Chapter
1. General provisions, 82A-101 to 82A-112, 82A-115 to 82A-122.
2. Department of administration, 82A-201 to 82A-214.
3. Department of agriculture, 82A-301 to 82A-305.
4. Department of business regulation, 82A-401 to 82A-404, 82A-406.
5. Department of education, 82A-501 to 82A-510.
6. Department of health and environmental sciences, 82A-601 to 82A-610.
7. Department of highways, 82A-701 to 82A-708.
8. Department of institutions, 82A-801 to 82A-807.
9. Department of intergovernmental relations, 82A-901 to 82A-906.
10. Department of labor and industry, 82A-1001 to 82A-1011, 82A-1014.
11. Department of state lands, 82A-1101, 82A-1101.1, 82A-1104.
12. Department of justice, 82A-1201 to 82A-1209.
13. Department of livestock, 82A-1301 to 82A-1305.
14. Department of military affairs, 82A-1401 to 82A-1404.
15. Department of natural resources and conservation, 82A-1501 to 82A-1506, 82A-1507.1 to 82A-1512.
16. Department of professional and occupational licensing, 82A-1601, 82A-1602, 82A-1602.8, 82A-1603 to 82A-1607.
17. Department of public service regulation, 82A-1701 to 82A-1703.
18. Department of revenue, 82A-1801 to 82A-1804, 82A-1806 to 82A-1808.
19. Department of social and rehabilitation services, 82A-1901 to 82A-1908.
20. Department of fish and game, 82A-2001, 82A-2001.1, 82A-2003 to 82A-2005.
21. Miscellaneous transfers, 82A-2101, 82A-2102.

CHAPTER 1—GENERAL PROVISIONS

Section
82A-101. Short title.
82A-102. Declaration of policy and purpose.
82A-103. Definitions.
82A-104. Structure of executive branch of state government.
82A-105. Policy-making authority and administrative powers of governor.
82A-106. Appointment and qualifications of department heads.
82A-107. Duties and powers of department heads.
82A-108. Allocation for administrative purposes only.
82A-109. Prior right of department head to agencies and records.
82A-110. Creation of advisory councils.
82A-111. Administratively created agencies—prohibition.
82A-112. Quasi-judicial boards.
82A-115. Future agencies and functions.
82A-116. Rights of state personnel.
82A-117. Rights to property.
82A-118. Rules, regulations, and orders.
82A-119. Legal proceedings.
82A-120. Rights and duties under existing transactions.
82A-121. References.
82A-122. Federal aid.

82A-101. Short title. This title shall be known and may be cited as the "Executive Reorganization Act."

History: En. 82A-101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 358, L. 1973.

Title of Act

An act to reorganize the executive department of Montana state government in accordance with the constitutional amendment, chapter 1 of the extraordinary session, Laws of Montana, 1969, adopted at the general election of November 3, 1970, and effective under the governor's proclamation, November 20, 1970, which pro-

vides that: 'All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of the state, attorney general, state treasurer, state auditor, and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than July 1, 1973.'; and repealing sections 27-427, 59-901, and 59-902, R. C. M., 1947.

Amendments

The 1973 amendment substituted "title" for "act"; and deleted "of 1971" from the end of the short title.

82A-102. Declaration of policy and purpose. (1) The purpose of this title is to comply with article VI, section 7, of the Montana constitution which requires that all executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than twenty (20) principal departments so as to provide an orderly arrangement in the administrative organization of state government.

(2) It is the public policy of this state and the purpose of this title to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; to effect the grouping of state agencies into a reasonable number of departments primarily according to function; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; and to eliminate overlapping and duplication of effort within the executive branch of state government.

History: En. 82A-102 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; substituted the reference to the 1972 constitution in subsection (1) for a reference to the 1970 constitutional amendment; inserted "bureaus" in subsection (1); deleted the state treasurer and state auditor from the list of officers excepted from the operation of subsection (1); deleted "by no later than July 1, 1973" at the end of subsection (1); added "so as to provide an orderly arrangement in the administrative organization of state government" at the end of subsection (1); deleted subsections (3) and (4), which declared the legislative intent to change functions with the least possible disruption of service and the least expense, and the intent not to change statutory functions unless specifically expressed; and made minor changes in phraseology and style.

82A-103. Definitions. As used in this title:

(1) "Executive branch" means the executive branch of state government referred to in the Montana constitution, articles III and VI.

(2) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(3) "Unit" means an internal subdivision of an agency, created by law or by administrative action, including a division, bureau, section, or

department, and an agency allocated to a department for administrative purposes only by this title.

(4) "Department" means a principal functional and administrative entity, created by this title, within the executive branch of state government; is one of the twenty (20) principal departments permitted under the constitution; and includes its units.

(5) "Department head" means a director, commission, board, commissioner, or constitutional officer in charge of a department created by this title.

(6) "Director" means a department head specifically referred to as a director in this title, and does not mean a commission, board, commissioner, or constitutional officer.

(7) "Advisory capacity" means furnishing advice, gathering information, making recommendations, and performing such other activities as may be necessary to comply with federal funding requirements, and does not mean administering a program or function or setting policy.

(8) "Function" means a duty, power, or program, exercised by or assigned to an agency, whether or not specifically provided for by law.

(9) "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function.

(10) "Quasi-legislative function" generally means making or having the power to make rules or set rates and all other acts connected with or essential to the proper exercise of a quasi-legislative function.

History: En. 82A-103 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" throughout the section; substituted "executive branch" for "executive department" throughout the section; changed the reference at the end of subdivision (1) so as to refer to the appropriate articles of the 1972 constitution; deleted subdivision (2) defining "reorganization amendment" and subdivision (12) defining "investment function"; renumbered subdivisions (3) to (11) as (2) to (10); deleted "or transferred" following "allocated" in subdivision (3); deleted "Except when used in connection with the name of an agency existing before the effective date of the applicable chapter of this act" from the beginning of subdivision (4); and substituted "constitution" for "reorganization amendment" in subdivision (4).

82A-104. Structure of executive branch of state government. (1) In accordance with the constitution, all executive and administrative offices, boards, commissions, agencies, and instrumentalities of the executive branch of state government, and their respective functions, are allocated by this title among and within the following departments created by this title:

(a) Department of administration.

(b) Department of agriculture.

(c) Department of business regulation.
(d) Department of education.
(e) Department of fish and game.
(f) Department of health and environmental sciences.
(g) Department of highways.
(h) Department of institutions.
(i) Department of intergovernmental relations.
(j) Department of labor and industry.
(k) Department of justice.
(l) Department of livestock.
(m) Department of military affairs.
(n) Department of natural resources and conservation.
(o) Department of professional and occupational licensing.
(p) Department of public service regulation.
(q) Department of revenue.
(r) Department of social and rehabilitation services.
(s) Department of state lands.

(2) For its internal structure, each department shall adhere to the following standard terms:

(a) The principal unit of a department is a "division." Each division shall be headed by an "administrator."

(b) The principal unit of a division is a "bureau." Each bureau shall be headed by a "chief."

(c) The principal unit of a bureau is a "section." Each section shall be headed by a "supervisor."

History: En. 82A-104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 250, L. 1973; amd. Sec. 4, Ch. 358, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 250 and once by Ch. 358. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" in subdivision (k).

Chapter 358, Laws of 1973, substituted "executive branch" for "executive department" and "this title" for "this act" throughout the section; substituted "constitution" for "reorganization amendment" in subsection (1); rearranged the departments under subsection (1) in alphabetical order; deleted subsection (2) referring to the constitutional offices and preserving their functions; and renumbered subsection (3) as (2).

82A-105. Policy-making authority and administrative powers of governor. In accordance with article VI, section 4 of the Montana constitution, the governor is the chief executive officer of the state. Subject to the constitution and law of this state, the governor shall formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of super vision, approval, direction, and appointment over all departments and their units, other than the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, except as otherwise provided by law. Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secre-

tary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final.

History: En. 82A-105 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 358, L. 1973.

Amendments

The 1973 amendment changed the constitutional reference in the first sentence so as to refer to the 1972 constitution; changed references to the executive department to the executive branch throughout the section; and deleted "state treasurer" following "attorney general" in the third and fourth sentences.

82A-106. Appointment and qualifications of department heads. (1) The governor shall appoint at the beginning of each gubernatorial term each department head who is a director in this title.

(2) An appointment of a director by the governor is subject to the confirmation of the senate, except that the governor may appoint a director to assume office before the senate meets in its next regular session to consider the appointment. A director so appointed is vested with all the functions of the office upon assuming the office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(3) A director serves at the pleasure of the governor. The governor may remove a director at any time and appoint a new director to the office.

(4) The governor shall select a director on the basis of his professional and administrative knowledge and experience and such additional qualifications as are provided by law.

(5) If a vacancy occurs in the office of a director, the governor shall appoint a new director to serve at the pleasure of the governor.

(6) Heads of departments who are not directors shall be elected or appointed and serve, and their vacancies filled, as provided by law.

History: En. 82A-106 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 358, L. 1973.

Amendments

The 1973 amendment inserted "at the beginning of each gubernatorial term" in subsection (1); and substituted "title" for "act" at the end of subsection (1).

82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) Supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law.

(b) Establish the policy to be followed by the department and employees.

(c) Compile and submit reports and budgets for the department as required by law or requested by the governor.

(d) Provide the governor with any information that he requests at any time on the operation of the department.

(e) Represent the department in communications with the governor.

(f) Prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the

custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices and the governor may not prescribe rules for them.

(g) Subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with section 82A-104(2).

(h) Subject to law, and the state merit system if applicable, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions.

(i) Maintain a central office in Helena for the department, and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) Subject to law, and the state merit system if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(b) Delegate any of the functions vested in the department head to subordinate employees.

(c) Apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions.

(d) Enter into agreements with federal, state, and local agencies necessary to carry out the department's functions.

History: En. 82A-107 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "by law" for "in this act" in the preliminary clause of subsection (1); substituted "title" for "act" in subdivision (1)(a); deleted "state treasurer" from the second sentence in subdivision (1)(f); inserted "Subject to the approval of the governor" at the beginning of subdivision (1)(g); substituted "by law" for "within this act" in the preliminary clause of subsection (2); deleted "except the power to remove employees of the department and fix their compensation" from the end of subdivision (2)(b); deleted the former subdivision (2)(c) relating to bonds required of employees; and added subdivisions (2)(c) and (d); and made a minor change in style.

82A-108. Allocation for administrative purposes only. (1) An agency allocated to a department for administrative purposes only in this title shall:

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) Direct and supervise the budgeting, record keeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.

(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603(6), the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this title shall:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration.

History: En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973.

Amendments

The 1973 amendment deleted "or transferred" after "allocated" in the preliminary clauses in subsections (1), (2) and (3); substituted "this title" for "this act" throughout the section; and made a minor change in style.

82A-109. Prior right of department head to agencies and records. Each department head designated by this title or appointed by the governor has, before assuming the office of the department head, full access to all agencies and their records within the department created by this title for the purpose of formulating plans for internal organization and the fiscal and personnel administration of the department.

History: En. 82A-109 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in two places.

82A-110. Creation of advisory councils. (1) A department head or the governor may create advisory councils. An official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, or an agency, may also create advisory councils, but only if federal law or regulation requires that such official or agency create the advisory council as a condition to the receipt of federal funds.

(2) Each advisory council created under this section shall be known as the "———— advisory council."

(3) The creating authority shall prescribe the composition and advisory functions of each advisory council created; appoint its members, who shall serve at the pleasure of the governor; and specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity as defined in section 82A-103(7).

(5) Unless he is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid in an amount to be determined by the department head, not to exceed twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of council duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of council duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year each advisory council shall elect a chairman and such other officers as it considers necessary.

(7) Unless otherwise specified by the creating authority, each advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor, and may meet at other times on the call of the chairman or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (10) of this section, an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor must file in his office and in the office of the secretary of state a record of the council created showing the council's:

(a) Name, in accordance with subsection (2) of this section.

(b) Composition.

(c) Names and addresses of the appointed members.

(d) Purpose.

(e) Term of existence, in accordance with subsection (11) of this section.

(10) The board of education, the attorney general, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. They must file a record of each council created by them in the office of the governor and the office of the secretary of state in accordance with subsection (9) of this section.

(11) An advisory council may not be created to remain in existence longer than two (2) years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs later, unless extended by the governor, or by the board of education, the attorney general, or the superintendent of public instruction for those advisory councils created in the manner set forth in subsection (10) of this section. If the existence of an advisory council is extended, they shall specify a new date, not more than two (2) years later, when the existence of the advisory council ends, and file a record of the order in the office of the

governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

History: En. 82A-110 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "executive branch" for "executive department" in the second sentence of subsection (1); inserted "or of any political subdivision of this state" in both sentences in subsection (5); substituted "is entitled to be paid" or equivalent terminology throughout subsection (5) for "may be paid"; inserted "actual and necessary" before "expenses" near the end of subsection (5); deleted "executive order of" after "unless extended by" in the first sentence of subsection (11); and deleted former subsection (12) requiring the filing of a one-time report on advisory bodies.

82A-111. Administratively created agencies—prohibition. The governor, a department head, or any other official of the executive branch of state government, or an agency, may not, by administrative action, create or attempt to create an agency of state government. This section does not apply to:

(1) Advisory councils created in accordance with section 82A-110.

(2) Units within the internal structure of a department established under section 82A-107(g).

History: En. 82A-111 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "executive branch" for "executive department" in the preliminary clause; and made minor changes in style.

82A-112. Quasi-judicial boards. If an agency is designated by law as a quasi-judicial board for the purposes of this section:

(1) The number of and qualifications of its members are as prescribed by law; in addition to those qualifications, at least one (1) member shall be an attorney licensed to practice law in this state.

(2)(a) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term, and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term, and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term, and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office, and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid twenty-five dollars ($25) for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for actual and necessary expenses incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for their actual and necessary expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973.

Amendments

The 1973 amendment combined former subsection (1) relating to boards created by the 1971 act and former subsection (2) relating to boards continued by the 1971 act; substituted numerical designations for subdivisions that were previously lettered subdivisions of subsections (1) and (2); deleted former subdivision (2)(c), a saving clause; deleted former subsection (3), relating to hearings and hearing examiners; inserted new matter as subsections (3) and (4); added the second sentence to subsection (5); inserted "or of a political subdivision of this state" in two places in subsection (7); inserted "actual and necessary" before "expenses" at the end of subsection (7); added the second sentence to subsection (8); and made numerous minor changes in phraseology, style and arrangement.

82A-113, 82A-114. Repealed.

Repeal

Sections 82A-113, 82A-114 (Sec. 1, Ch. 272, L. 1971), relating to functions of agencies split or not assigned by the reorganization, were repealed by Sec. 21, Ch. 358, Laws 1973.

82A-115. Future agencies and functions. If an agency or a function is not allocated or transferred to a department or a constitutional office by this title or any other act of the legislature, the governor shall, by executive order, allocate that agency for administrative purposes only or function to the appropriate principal department or constitutional office. The governor shall transmit copies of all executive orders issued under this section to the legislature at its next regular session.

History: En. 82A-115 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 13, Ch. 358, L. 1973.

Amendments

The 1973 amendment deleted "of an agency established after the effective date of this chapter" after "function" near the beginning; substituted "this title" for "this act" in the first sentence; inserted "for administrative purposes only" in the first sentence; substituted "constitutional office" for "unit created by this or any future act"; added the second sentence; and made minor changes in phraseology.

82A-116. Rights of state personnel. Unless otherwise provided in this act, each state officer or employee affected by the reorganization of the

executive branch of state government under this title is entitled to all rights which he possessed as a state officer or employee before the effective date of the applicable chapter of this title, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy. This section is not intended to create any new rights for any state officer or employee, but to continue only those rights in effect before the effective date of the applicable chapter of this title or an amendment to this title.

History: En. 82A-116 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "branch" for "department" near the beginning; substituted "this title" for "this act" in three places; and added "or an amendment to this title" at the end of the section.

82A-117. Rights to property. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rights to all real and personal property of that agency relating to the functions or parts of functions transferred. The property includes real property, records, office equipment, supplies, contracts, books, papers, documents, maps, appropriations, accounts within and without the state treasury, funds, vehicles, and all other similar property. However, the department or unit may not use or divert moneys in a fund or account for a purpose other than provided by law. The governor shall resolve any conflict as to the proper disposition of the property, and his decision is final. This section does not apply to property owned by the federal government.

History: En. 82A-117 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 15, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in the first sentence.

82A-118. Rules, regulations, and orders. The department or unit thereof that succeeds to all or part of the functions of an agency under this title also succeeds to the rules, regulations, and orders of that agency relating to the functions or parts of functions transferred. The rules, regulations, and orders of any agency in effect before the effective date of the transfer remain in effect until amended, repealed, superseded, or nullified by proper authority or by law.

History: En. 82A-118 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 16, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "this title" for "this act" in the first sentence; and substituted "transfer" for "chapter affecting the agency" in the second sentence.

82A-119. Legal proceedings. The transfer or abolition of an agency or function under this title does not affect the validity of any judicial or administrative proceeding pending or which could have been commenced before the effective date of the transfer or abolition, and the department or unit which succeeds to the functions of an agency relating to the proceeding shall be substituted as a party in interest.

History: En. 82A-119 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 17, Ch. 358, L. 1973.

Amendments

The 1973 amendment inserted "The transfer or abolition of an agency or func-

tion under" at the beginning of the section; substituted "this title" for "this act"; and substituted "transfer or abolition" for "applicable chapter of this act."

82A-120. Rights and duties under existing transactions. The rights, privileges, and duties of the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, and other transactions entered into, before the effective date of the transfer of functions under this title, by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements is impaired or diminished by reason of the transfer of the functions of an agency or the abolition of an agency under this title. The department or unit which succeeds to the functions of an agency is substituted for that agency and succeeds to its rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions.

History: En. 82A-120 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 18, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "transfer of functions under this title" for "applicable chapter of this act" in the first sentence; and substituted "under this title" for "in this act" at the end of the first sentence.

82A-121. References. Unless inconsistent with this title, if an agency is abolished under this title, or if a function of an agency is transferred to another agency, references to the abolished agency or to the agency whose functions were transferred in any law, contract, or other document shall apply to the agency which succeeds to the functions which were transferred.

History: En. 82A-121 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 19, Ch. 358, L. 1973.

Amendments

The 1973 amendment completely rewrote this section and made it applicable to abolition of agencies or transfer of functions at any time rather than those made by the 1971 reorganization.

82A-122. Federal aid. If any part of this title is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this title has no effect, and the governor may issue an executive order which substitutes for that part to the extent necessary to effectuate the receipt of federal aid. The order is effective until the legislative assembly again acts upon the matter.

History: En. 82A-122 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 20, Ch. 358, L. 1973.

Amendments

The 1973 amendment substituted "title" for "act" twice in the first sentence.

Repealing Clauses

Section 3 of Ch. 272, Laws 1971 read "Sections 59-901 and 59-902, R. C. M. 1947, are repealed."

Section 21 of Ch. 358, Laws 1973 read "Sections 82A-113, 82A-114 and 82A-123, R. C. M. 1947, are repealed."

Separability Clause

Section 5 of Ch. 272, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 272, Laws 1971 read "Chapters 1 and 21 of Section 1 of this act and Sections 4 and 5 of this act are effective upon its passage and approval. Chapters 2 through 20 of section 1 of this act are effective upon the date the governor signs an executive order implementing the chapter or on December 31, 1972, whichever occurs first. The governor shall file the executive order with the

secretary of state on the day the order is signed. The secretary of state shall file and record the order and send a copy of the order to each addressee on his official mailing list for the Revised Codes of Montana and to each addressee on the mailing list of the publisher of the Revised Codes of Montana. Section 2 of this act is effective when Chapter 4 of Section 1 of this act is effective, and Section 3 is effective when Chapter 2 of Section 1 of this act is effective."

82A-123. Repealed.

Repeal

Section 82A-123 (Sec. 4, Ch. 272, L. 1971), saving laws not specifically amended or repealed, except in the event of an irreconcilable conflict, was repealed by Sec. 21, Ch. 358, Laws 1973.

CHAPTER 2—DEPARTMENT OF ADMINISTRATION

Section

82A-201. Department of administration—creation—head.
82A-202. Agencies abolished—functions transferred to department.
82A-203. Additional functions transferred to department.
82A-204. Board of investments—creation—allocation—composition—designation.
82A-205. Investment functions transferred to board of investments.
82A-206. Merit system council—creation—continued—transfer—composition.
82A-207. Board of examiners—continued—transfer—functions.
82A-208. Board of state prison commissioners—continued—transfer.
82A-209. State depository board—continued—transfer—functions.
82A-210. Board of administration—continued—transfer—functions.
82A-211. Functions transferred to board of administration.
82A-212. Teachers' retirement board—continued—transfer—functions.
82A-213. Additional agencies abolished.
82A-214. Office of state treasurer transferred to department.

82A-201. Department of administration—creation—head. There is created a department of administration. The department head is a director of administration appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-201 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 4-71, dated Aug. 20, 1971, effective Aug. 20, 1971, as amended by Executive Reorganization Order 6-72, dated Sept. 25, 1972.

82A-202. Agencies abolished—functions transferred to department. (1) The department of administration and its units, created in Title 82, chapter 33, R. C. M. 1947, including the state purchasing department created in Title 82, chapter 19, R. C. M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to building construction standards), transferred to the department of justice in chapter 12 of this act, are transferred to the department of administration created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of administration or its units or the state purchasing department, except the references contained in Title 69, chapter 21, R. C. M. 1947, means the department of administration created in this chapter.

(2) The office of state controller, created in Title 82, chapter 1, R. C. M. 1947, the position of the state purchasing agent, created in Title 82, chapter 19, R. C. M. 1947, and the position of budget director, created in Title 79, chapter 10, R. C. M. 1947, are abolished, and their functions, except the functions contained in Title 69, chapter 21, R. C. M.

1947 (pertaining to building construction standards), transferred to the department of justice in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state controller, state purchasing agent, or budget director, except the references contained in Title 69, chapter 21, R. C. M. 1947, means the department of administration created in this chapter.

(3) The state board of review, created in Title 79, chapter 24, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of review means the department of administration created in this chapter.

(4) The Montana highway patrolmen's retirement board, created in Title 31, chapter 2, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrolmen's retirement board, except the references relating to the quasi-judicial functions transferred to the board of administration in section 82A-211 of this chapter, means the department of administration created in this chapter.

(5) The functions of the state building code council transferred to the department of law enforcement and public safety [justice] under section 82A-1202(6) are transferred to the department of administration.

History: En. 82A-202 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 211, L. 1973; amd. Sec. 2, Ch. 250, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 211 and once by Ch. 250. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments. The compiler has inserted the bracketed word "justice" in subsection (5).

Amendments

Chapter 211, Laws of 1973, added subsection (5).

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" in subsections (1) and (2).

82A-203. Additional functions transferred to department. (1) The functions of the board of state prison commissioners, which is created in article VII, section 20 of the Montana constitution, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of state prison commissioners means the department of administration created in this chapter.

(2) The functions of the board of examiners, which is created in article VII, section 20 of the Montana constitution, except the functions contained in article VII, section 20 of the Montana constitution and the functions relating to the planning, financing, administration, and construction of state buildings in the long-range building program contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947, retained in the board in section 82A-207 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners, except the references contained in Title

78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947, means the department of administration created in this chapter.

History: En. 82A-203 by Sec. 1, Ch. 272, L. 1971.

82A-204. Board of investments—creation—allocation—composition—designation. (1) There is created a board of investments.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. Personnel for the board shall be appointed by the department subject to the approval of the board.

(3) The board is composed of five (5) members, appointed by the governor as prescribed in section 82A-112 of this act, informed and experienced in the subject of investments.

(4) The board of investments has the sole authority to exercise the investment functions transferred to it under section 82A-205 of this chapter. No other agency may invest state funds. All laws governing the exercise of the investment functions remain in effect, and the board shall direct the investment of state funds in accordance with those laws and the constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board is designated as a quasi-judicial board for the purposes of section 82A-112 of this act.

History: En. 82A-204 by Sec. 1, Ch. 272, L. 1971.

82A-205. Investment functions transferred to board of investments. (1) The investment functions and the functions relating thereto of the state board of land commissioners, which are contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the board of investments created in this chapter:

(a) Title 11, chapter 23 (pertaining to municipal bonds and indebtedness).

(b) Title 16, chapter 20 (pertaining to county bonds).

(c) Title 31, chapter 2 (pertaining to the highway patrolmen's retirement system).

(d) Title 59, chapter 11 (pertaining to social security coverage).

(e) Title 68, chapter 7 (pertaining to the management of the retirement fund), and chapter 14 (pertaining to the game wardens' retirement system).

(f) Title 75, chapter 62 (pertaining to the teachers' retirement system).

(g) Title 79, chapter 3 (pertaining to the state depository board), chapter 11 (pertaining to land board funds), and chapter 12 (pertaining to the Montana trust and legacy fund).

(h) Title 81, chapter 10 (pertaining to investments), and chapter 24 (pertaining to development of resources).

(i) Title 92, chapter 11 (pertaining to workmen's compensation).

Unless inconsistent with this act, any reference in the citations enumerated above in this subsection to the state board of land commissioners relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(2) The investment functions of the state depository board and of the state treasurer, which are contained in Title 79, chapter 3, R. C. M. 1947 (pertaining to state depository board—deposit and investment of state funds), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 79, chapter 3, R. C. M. 1947, to the state depository board or the state treasurer relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(3) The investment functions of the industrial accident board, which are contained in Title 92, chapter 13, R. C. M. 1947 (pertaining to workmen's compensation), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 92, chapter 13, R. C. M. 1947, to the industrial accident board relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(4) The investment functions of the board of administration, including its investment functions as the Montana state game wardens' retirement board and as the Montana judges' retirement board, which are contained in Title 68, chapters 1 through 13 (pertaining to the public employees' retirement system), Title 68, chapter 14 (pertaining to the game wardens' retirement system), and Title 93, chapter 11 (pertaining to the judges' retirement system), are transferred to the board of investments. Unless inconsistent with this act, any reference in Title 68, chapters 1 through 14, and Title 93, chapter 11, R. C. M. 1947, to the board of administration relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

(5) The investment functions of the teachers' retirement board, which are contained in Title 75, chapter 62 (Laws of Montana, 1971, chapter 5, sections 96 through 113), R. C. M. 1947 (pertaining to the teachers' retirement system), are transferred to the board of investments.
Unless inconsistent with this act, any reference in Title 75, chapter 62 (Laws of Montana, 1971, chapter 5, sections 96 through 113), R. C. M. 1947, to the teachers' retirement board relating to the investment functions transferred to the board of investments means the board of investments created in this chapter.

History: En. 82A-205 by Sec. 1, Ch. 272, L. 1971.

82A-206. Merit system council—creation—continued—transfer—composition. (1) The administratively created agency known as the merit system council is hereby created by law.

(2) The council and its functions are continued.

(3) The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However,

the council may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The council is composed of three (3) members, appointed by the governor for six (6) year overlapping terms. The governor shall appoint the members upon the recommendation of the agencies which participate in the joint merit system, and in accordance with federal requirements. The members of the council before the effective date of this chapter continue as members for the remainder of their terms; thereafter, members shall be appointed in accordance with this section.

(5) Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act.

History: En. 82A-206 by Sec. 1, Ch. 272, L. 1971.

82A-207. Board of examiners—continued—transfer—functions. (1) The board of examiners, created in article VII, section 20 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board retains only the following functions:

(a) Its functions relating to examining claims against the state, except salaries or compensation of officers fixed by law, as prescribed in article VII, section 20 of the Montana constitution.

(b) Its functions relating to planning, financing, administration, and construction of state buildings in the long range building program, contained in Title 78, chapters 7 and 12; Title 79, chapter 22; and sections 82-1131, 82-3317, and 82-3319, R. C. M. 1947.

History: En. 82A-207 by Sec. 1, Ch. 272, L. 1971.

82A-208. Board of state prison commissioners—continued—transfer. (1) The board of state prison commissioners, created in article VII, section 20 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

History: En. 82A-208 by Sec. 1, Ch. 272, L. 1971.

82A-209. State depository board—continued—transfer—functions. (1) The state depository board, created in article XII, section 14 of the Montana constitution, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The functions of the board, except the investment functions contained in Title 79, chapter 3, R. C. M. 1947, transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

History: En. 82A-209 by Sec. 1, Ch. 272, L. 1971.

82A-210. Board of administration—continued—transfer—functions. (1) The board of administration, provided for in Title 68, chapter 5, R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The functions of the board, including its functions as the Montana state game wardens' retirement board and as the Montana judges' retirement board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

History: En. 82A-210 by Sec. 1, Ch. 272, L. 1971.

82A-211. Functions transferred to board of administration. The quasi-judicial functions of the Montana highway patrolmen's retirement board, which are contained in Title 31, chapter 2, R. C. M. 1947 (pertaining to the highway patrolmen's retirement system), are transferred to the board of administration. Unless inconsistent with this act, any reference in Title 31, chapter 2, R. C. M. 1947, to the Montana highway patrolmen's retirement board relating to the quasi-judicial functions transferred to the board of administration means the board of administration.

History: En. 82A-211 by Sec. 1, Ch. 272, L. 1971.

82A-212. Teachers' retirement board—continued—transfer—functions. (1) The teachers' retirement board, provided for in Title 75, chapter 62 (sections 96 through 113, public schools recodification laws of 1971), R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The functions of the board, except the investment functions transferred to the board of investments in section 82A-205 of this chapter, are continued in the board.

History: En. 82A-212 by Sec. 1, Ch. 272, L. 1971.

82A-213. Additional agencies abolished. The following agencies are abolished:

(1) The data processing advisory committee, provided for in section 82-3306, R. C. M. 1947.

(2) The advisory council on building construction, provided for in section 82-3318, R. C. M. 1947.

History: En. 82A-213 by Sec. 1, Ch. 272, L. 1971.

82A-214. Office of state treasurer transferred to department. (1) The office of state treasurer is transferred to the department of administration for administrative purposes only as prescribed in section 82A-108, R. C. M. 1947, except:

(1) the state treasurer shall continue his fiscal duties as prescribed by law, and section 82A-108(2)(c) does not apply; and

(2) the state treasurer may hire his own personnel, and section 82A-108(2)(d) does not apply.

History: En. Sec. 1, Ch. 136, L. 1973.

Compiler's Notes

Section 1, Ch. 121, Laws of 1973, created a section 82A-217 abolishing the passenger tramway safety board and transferring its functions to the department of administration. However, the section was repealed by Sec. 58, Ch. 511, Laws of 1973.

Title of Act

An act transferring the office of state treasurer to the department of administration for administrative purposes only, to comply with article VI, section 7 of the 1972 Montana constitution.

CHAPTER 3—DEPARTMENT OF AGRICULTURE

Section
82A-301. Department of agriculture—creation—head.
82A-302. Agencies abolished—functions transferred to department.
82A-303. Additional functions transferred to department.
82A-304. Montana wheat research and marketing committee—continued—transfer.
82A-304.1. Board of hail insurance transferred to department.
82A-305. Additional agencies abolished.

82A-301. Department of agriculture—creation—head. There is created a department of agriculture. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the commissioner of agriculture. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

History: En. 82A-301 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 10-71, dated Dec. 9, 1971, effective Dec. 9, 1971.

82A-302. Agencies abolished—functions transferred to department. (1) The department of agriculture, created in Title 3, chapter 1, R. C. M. 1947, and its units, except the administratively created dairy and egg division and the division of weights and measures, created in Title 90, chapter 1, R. C. M. 1947, are abolished, and their functions, except those enumerated below, are transferred to the department of agriculture created in this chapter:

(a) The functions contained in Title 3, chapters 22 through 24 (pertaining to poultry improvement, eggs and egg dealers, and dairy products), and in Title 27, chapter 5, R. C. M. 1947 (pertaining to oleomargarine regulation), transferred to the department of livestock in chapter 13 of this act.

(b) The functions contained in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), transferred to the department of business regulation in chapter 4 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department or its units, except the references enumerated below, means the department of agriculture created in this chapter:

(a) The references contained in Title 3, chapters 22 through 24, and in Title 27, chapter 5, R. C. M. 1947.

(b) The functions contained in Title 90, chapter 1, R. C. M. 1947 Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947 (pertaining to quality labels), to the department or its units means the department of agriculture created in this chapter or the department of livestock created in chapter 13 of this act, whichever is applicable.

(2) The position of agricultural marketing co-ordinator, created in Title 3, chapter 1, R. C. M. 1947, is abolished, and the functions of the co-ordinator are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the agricultural marketing co-ordinator means the department of agriculture created in this chapter.

(3) The office of farm storage commissioner, created in Title 3, chapter 4, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the farm storage commissioner means the department of agriculture created in this chapter.

History: En. 82A-302 by Sec. 1, Ch. 272, L. 1971.

82A-303. Additional functions transferred to department. (1) The functions of the state board of health and the state department of health, which are contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in Title 27, chapter 2, R. C. M. 1947, to the board of health or department of health means the department of agriculture created in this chapter.

(2) The functions of the state apiarist, which are contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing apiary laws), are transferred to the department. Unless inconsistent with this act, any reference in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, to the state apiarist means the department of agriculture created in this chapter.

(3) The functions of the commissioner of agriculture, which position is provided for in article XVIII, section 1 of the Montana constitution and in Title 3, chapter 1, R. C. M. 1947, except those enumerated below, are transferred to the department:

(a) The functions of the commissioner as ex officio state sealer of weights and measures, which position is created in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), transferred to the department of business regulation in chapter 4 of this act.

(b) The functions which are contained in Title 60, chapter 2, R. C. M. 1947 (pertaining to petroleum products regulation), transferred to the department of business regulation in chapter 4 of this act.

(c) The functions which are contained in Title 3, chapter 22, R. C. M. 1947 (pertaining to poultry improvement), chapter 23 (pertaining to eggs

and egg dealers), and chapter 24 (pertaining to dairy products), transferred to the department of livestock in chapter 13 of this act.

(d) The functions which are contained in Title 27, chapter 5, R. C. M. 1947 (pertaining to oleomargarine regulation), transferred to the department of livestock in chapter 13 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the commissioner of agriculture, except those enumerated below, means the department of agriculture created in this chapter:

(a) The references contained in Title 90, chapter 1, R. C. M. 1947.

(b) The references contained in Title 60, chapter 2, R. C. M. 1947.

(c) The references contained in Title 3, chapters 22, 23, and 24, R. C. M. 1947.

(d) The references contained in Title 27, chapter 5, R. C. M. 1947.

Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947 (pertaining to quality labels), to the commissioner of agriculture means the department of agriculture created in this chapter or the department of livestock created in chapter 13 of this act, whichever is applicable.

History: En. 82A-303 by Sec. 1, Ch. 272, L. 1971.

82A-304. Montana wheat research and marketing committee—continued—transfer. (1) The Montana wheat research and marketing committee, created in Title 3, chapter 29, R. C. M. 1947, and its functions are continued.

(2) The committee is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the committee before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of committee members remain as prescribed by law.

History: En. 82A-304 by Sec. 1, Ch. 272, L. 1971.

82A-304.1. Board of hail insurance transferred to department. The state board of hail insurance created in Title 82, chapter 15, and transferred under section 82A-2103 to the state auditor, is transferred to the department of agriculture, for administrative purposes only.

History: En. Sec. 1, Ch. 395, L. 1973.

Title of Act

An act transferring the state board of hail insurance from the state auditor to the department of agriculture for administrative purposes only; and repealing section 82A-2103, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 395, Laws 1973 read "Section 82A-2103, R. C. M. 1947, is repealed."

82A-305. Additional agencies abolished. The following agencies are abolished:

(1) The agricultural marketing advisory body, created in section 3-121, R. C. M. 1947.

(2) The poultry advisory board, provided for in section 3-2201, R. C. M. 1947.

(3) The state mosquito control advisory committee, created in section 16-4209, R. C. M. 1947.

(4) The agriculture and livestock council, created in section 82-2901, R. C. M. 1947.

(5) The Montana wool laboratory advisory committee, created in section 75-717, R. C. M. 1947.

History: En. 82A-305 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 4—DEPARTMENT OF BUSINESS REGULATION

Section
82A-401. Department of business regulation—creation—head.
82A-402. Agencies abolished—functions transferred to department.
82A-403. Additional functions transferred to department.
82A-404. Board of trade abolished—functions transferred.
82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation.

82A-401. Department of business regulation—creation—head. There is created a department of business regulation. The department head is the state examiner provided for in article VII, section 8 of the Montana constitution. He shall serve at the pleasure of the governor.

History: En. 82A-401 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 7-71, dated Nov. 11, 1971, effective Nov. 15, 1971.

82A-402. Agencies abolished—functions transferred to department. (1) The state banking department of the state of Montana and the position of superintendent of banks, provided for in Title 5, chapter 6, R. C. M. 1947, are abolished, and their functions are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the superintendent of banks or the state banking department means the department of business regulation.

(2) The office of consumer loan commissioner, created in Title 47, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the consumer loan commissioner means the department of business regulation.

(3) The position of state sealer of weights and measures and the division of weights and measures, created in Title 90, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state sealer or to the division of weights and measures means the department of business regulation.

History: En. 82A-402 by Sec. 1, Ch. 272, L. 1971.

82A-403. Additional functions transferred to department. (1) The functions of the state examiner, except the functions with respect to the

political subdivisions of the state and their officers and employees transferred to the department of intergovernmental relations and enumerated in chapter 9 of this act, are transferred to the department. In accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state examiner, except the references contained in the citations enumerated above in this subsection, means the department of business regulation.

(2) The functions of the Montana milk control board, which is created in Title 27, chapter 4, R. C. M. 1947, except the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to fixing minimum prices for milk), retained in the board under section 82A-406 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana milk control board, except the references in section 27-407, R. C. M. 1947, relating to the quasi-judicial functions retained in the board under section 82A-406 of this chapter, means the department of business regulation.

(3) The functions of the commissioner of agriculture, which are contained in Title 60, chapter 2, R. C. M. 1947 (pertaining to petroleum products regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 60, chapter 2, R. C. M. 1947, to the commissioner of agriculture means the department of business regulation.

(4) The functions of the department of agriculture, which are contained in Title 90, chapter 1, R. C. M. 1947 (pertaining to weights and measures), are transferred to the department of business regulation. Unless inconsistent with this act, any reference in Title 90, chapter 1, R. C. M. 1947, to the department of agriculture means the department of business regulation.

History: En. 82A-403 by Sec. 1, Ch. 272, L. 1971.

82A-404. Board of trade abolished—functions transferred. (1) The board of trade, provided for in Title 27, chapter 3, is abolished and its functions in Title 51, chapter 1 (pertaining to the Unfair Practices Act) are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation.

History: En. 82A-404 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 256, L. 1973.

Amendments

The 1973 amendment abolished the board of trade, formerly the board of food distributors; transferred its functions to the department of business regulation; and deleted former subsections (2) and (3), relating to the administration and functions of the board.

Repealing Clause

Section 2 of Ch. 256, Laws 1973 read "Sections 27-301 through 27-317, sections 70-201 through 70-233 and 82A-405, R. C. M. 1947, are repealed."

Effective Date

Section 3 of Ch. 256, Laws 1973 read "This act is effective June 30, 1973."

82A-405. Repealed.

Repeal

Section 82A-405 (Sec. 1, Ch. 272, L. 1971), abolishing the Montana trade commission and transferring its functions to the board of trade, was repealed by Sec. 2, Ch. 256, Laws 1973.

82A-406. Milk control board—continued—renamed board of milk control—transfer—functions—designation. (1) The Montana milk control board, created in Title 27, chapter 4, R. C. M. 1947, is continued, and the board is renamed the board of milk control.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board retains only the quasi-judicial functions contained in section 27-407, R. C. M. 1947 (pertaining to setting milk prices). Unless inconsistent with this act, any reference in section 27-407, R. C. M. 1947, to the Montana milk control board means the board of milk control.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-406 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 5—DEPARTMENT OF EDUCATION

Section

82A-501. Department—creation—head.
82A-502. Agencies abolished—functions transferred to co-operative extension service.
82A-503. Montana historical society transferred to department.
82A-504. Director of Montana historical society—continued.
82A-505. Functions of Montana historical society and of board of trustees transferred to director.
82A-506. Board functions.
82A-507. Board of trustees of state historical society—continued—composition—function.
82A-508. Montana arts council—continued—transfer.
82A-509. State library commission—continued—transfer.
82A-510. Additional agencies abolished.

82A-501. Department—creation—head. There is created a department of education. The department head is the state board of education, created in article XI, section 11 of the Montana constitution and provided for in Title 75, R. C. M. 1947.

History: En. 82A-501 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-72, dated Sept. 15, 1972, effective Sept. 15, 1972.

82A-502. Agencies abolished—functions transferred to co-operative extension service. (1) The position of state entomologist of Montana, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the position are transferred to the co-operative extension service within the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state entomologist means the co-operative extension service within the department of education.

(2) The position of state apiarist, provided for in Title 82, chapter 8, R. C. M. 1947, is abolished, and the functions of the office, except the

functions contained in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947 (pertaining to enforcing the apiary laws), transferred to the department of agriculture in chapter 3 of this act, are transferred to the co-operative extension service within the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state apiarist, except the references in section 82-806, subsections 1 through 4, and section 82-807(11), R. C. M. 1947, means the co-operative extension service within the department of education.

History: En. 82A-502 by Sec. 1, Ch. 272, L. 1971.

82A-503. Montana historical society transferred to department. The Montana historical society provided for in Title 44, chapter 5, R. C. M. 1947, is transferred to the department.

History: En. 82A-503 by Sec. 1, Ch. 272, L. 1971.

82A-504. Director of Montana historical society—continued. The position of director of the Montana historical society, which position is provided for in Title 44, chapter 5, R. C. M. 1947, and his functions are continued. After the effective date of this chapter, the director shall be appointed and may be removed by the board of trustees of the Montana historical society, subject to the approval of the board of education.

History: En. 82A-504 by Sec. 1, Ch. 272, L. 1971.

82A-505. Functions of Montana historical society and of board of trustees transferred to director. The functions of the Montana historical society and of the board of trustees of the Montana historical society, which society and board are provided for in Title 44, chapter 5, R. C. M. 1947, are transferred to the director of the Montana historical society. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana historical society or the board of trustees of the Montana historical society relating to the functions transferred to the director means the director of the Montana historical society within the department of education.

History: En. 82A-505 by Sec. 1, Ch. 272, L. 1971.

82A-506. Board functions. (1) The functions of the state board of education, including its functions as ex officio board of regents and as the state board for vocational education, are continued in the board as the department head, except:

(a) The functions of the Montana state bureau of mines and geology, which are contained in Title 50, chapter 10, R. C. M. 1947 (pertaining to strip coal-mining regulation), and which are transferred to the department of natural resources and conservation in chapter 15 of this act.

(b) The functions of the division of vocational rehabilitation, created in Title 41, chapter 8, R. C. M. 1947, transferred to the department of social and rehabilitation services in chapter 19 of this act.

(2) The composition, method of selection, terms of office, compensation, reimbursement, and qualifications of the members of the state board of education, the board of regents, and the state board for vocational education remain as prescribed by law.

History: En. 82A-506 by Sec. 1, Ch. 272, L. 1971.

Cross-References

Division of functions among state board of education and its component boards, sec. 75-5617.

82A-507. Board of trustees of state historical society—continued—composition—function. (1) The board of trustees of the state historical society, created in Title 44, chapter 5, R. C. M. 1947, is continued.

(2) The board consists of fifteen (15) members, appointed by the governor to serve at his pleasure. Members of the board before the effective date of this chapter serve for the remainder of their terms; thereafter, members shall be appointed and serve in accordance with this subsection. The qualifications for board members in section 44-520, R. C. M. 1947, apply. The board may organize itself in accordance with section 44-523(1), R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils in section 82A-110(5) of this act.

(3) The board shall only act in an advisory capacity to the state board of education and the director of the state historical society on matters relating to the functions of the director.

History: En. 82A-507 by Sec. 1, Ch. 272, L. 1971.

82A-508. Montana arts council—continued—transfer. (1) The Montana arts council, created in Title 82, chapter 36, R. C. M. 1947, and its functions are continued.

(2) The council is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the council before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of board members remain as prescribed by law.

(4) The director of the council shall be appointed and may be removed by the council, subject to the approval of the board of education.

History: En. 82A-508 by Sec. 1, Ch. 272, L. 1971.

82A-509. State library commission—continued—transfer. (1) The state library commission, created in Title 44, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The commission is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the commission before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members remain as prescribed by law.

(4) The state librarian shall be appointed and may be removed by the commission, subject to the approval of the board of education.

History: En. 82A-509 by Sec. 1, Ch. 272, L. 1971.

82A-510. Additional agencies abolished. The following agencies are abolished:

(1) The advisory council on teacher education and certification, administratively created.

(2) The council on education for the disadvantaged, administratively created.

History: En. 82A-510 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 6—DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Section
82A-601. Department of health and environmental sciences—creation—head.
82A-602. Agencies abolished—functions transferred to department.
82A-603. Additional functions transferred to department.
82A-604. Division of environmental sciences—creation.
82A-605. State board of health—continued—renamed—designation.
82A-606. Air pollution control advisory council—continued—membership—functions.
82A-607. State water pollution control council—continued—renamed water pollution control advisory council.
82A-608. Director of health and environmental sciences—creation—qualifications.
82A-609. Additional agencies abolished.
82A-610. Sanitarian advisory council abolished.

82A-601. Department of health and environmental sciences—creation—head. There is created a department of health and environmental sciences. The department head is the director of health and environmental sciences provided for in section 82A-608 of this chapter.

History: En. 82A-601 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 9-71, dated Nov. 26, 1971, effective Nov. 29, 1971.

82A-602. Agencies abolished—functions transferred to department. (1) The state department of health, created in Title 69, chapter 41, R. C. M. 1947, and its units are abolished, and their functions, except those enumerated below, are transferred to the department of health and environmental sciences:

(a) The functions contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, transferred to the department of agriculture in chapter 3 of this act.

(b) The function in section 69-4203(5), R. C. M. 1947 (pertaining to enforcing the industrial hygiene laws), transferred to the department of labor and industry in chapter 10 of this act. The department of health and environmental sciences shall notify the department of labor and industry of any alleged violation of the industrial hygiene laws or

rules established thereunder. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of health or its units, except those enumerated below, means the department of health and environmental sciences:

(a) The references contained in Title 27, chapter 2, R. C. M. 1947.

(b) The references contained in Title 69, chapter 42, R. C. M. 1947, relating to the enforcement functions transferred to the department of labor and industry in chapter 10 of this act.

(2) The sanitarians registration council, created in Title 69, chapter 34, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the sanitarians registration council means the department of health and environmental sciences.

(3) The Montana commission on alcohol and drug dependence, created in Title 69, chapter 62, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana commission on alcohol and drug dependence means the department of health and environmental sciences.

History: En. 82A-602 by Sec. 1, Ch. 272, L. 1971.

82A-603. Additional functions transferred to department. (1) The functions of the state water pollution control council, which is created in Title 69, chapter 48, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the department of health and environmental sciences.

(2) The functions of the state board of health, which is provided for in Title 69, chapter 41, R. C. M. 1947, except the functions enumerated below, are transferred to the department:

(a) The functions contained in the Montana Insecticide, Fungicide, and Rodenticide Act of 1947, Title 27, chapter 2, R. C. M. 1947, transferred to the department of agriculture in chapter 3 of this act.

(b) The functions contained in Title 50, chapter 11, R. C. M. 1947 (pertaining to dredge mining regulation), transferred to the department of natural resources and conservation in chapter 15 of this act.

(c) The functions contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), transferred to the department of labor and industry in chapter 10 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of health, except those enumerated below, means the department of health and environmental sciences:

(a) The references contained in Title 27, chapter 2, R. C. M. 1947.

(b) The references contained in Title 50, chapter 11, R. C. M. 1947.

(c) The references contained in Title 41, chapter 22, R. C. M. 1947.

History: En. 82A-603 by Sec. 1, Ch. 272, L. 1971.

82A-604. Division of environmental sciences—creation. There is created a division of environmental sciences within the department. The board of health and environmental sciences shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division.

History: En. 82A-604 by Sec. 1, Ch. 272, L. 1971.

82A-605. State board of health—continued—renamed—designation. (1) The state board of health provided for in Title 69, chapter 41, R. C. M. 1947, is continued and renamed the board of health and environmental sciences.

(2) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-605 by Sec. 1, Ch. 272, L. 1971.

82A-606. Air pollution control advisory council—continued—membership—functions. (1) The air pollution control advisory council, created in Title 69, chapter 39, R. C. M. 1947, is continued.

(2) Council membership remains as prescribed in section 69-3908, R. C. M. 1947, except that the executive officer of the state board of health is replaced by the director of the department of health and environmental sciences.

(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

(4) The council shall act in an advisory capacity to the department of health and environmental sciences on matters relating to air pollution.

(5) Subsections (5) through (8) of section 82A-110 of this act apply to the council and members.

History: En. 82A-606 by Sec. 1, Ch. 272, L. 1971.

82A-607. State water pollution control council—continued—renamed water pollution control advisory council. (1) The state water pollution control council, created in Title 69, chapter 48, R. C. M. 1947, is continued and renamed the water pollution control advisory council. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state water pollution control council means the water pollution control advisory council.

(2) Council membership remains as prescribed in section 69-4810, R. C. M. 1947, except that the executive officer of the state department of health, the state fish and game department director, and the director of the water resources board are replaced by the director of the department of health and environmental sciences, the director of the fish and game department, and the administrator of the water resources division of the department of natural resources and conservation, respectively.

(3) After the effective date of this chapter, appointed council members serve at the pleasure of the governor.

(4) The council shall only act in an advisory capacity to the department of health and environmental sciences on matters relating to water pollution.

(5) Subsections (5) through (8) of section 82A-110 of this act shall apply to the council and members.

History: En. 82A-607 by Sec. 1, Ch. 272, L. 1971.

82A-608. Director of health and environmental sciences—creation—qualifications. (1) There is created the position of director of health and environmental sciences. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads, and in addition shall:

(a) Have a degree of doctor of medicine.

(b) Have successfully completed at least one (1) year of graduate study in an approved school of public health.

(c) Have had at least two (2) years' experience as a full-time public health officer.

(d) Be eligible for a license by the board of medical examiners.

(e) Receive a license from the board of medical examiners not later than six (6) months after his appointment.

(2) Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the board of health and environmental sciences. The director is the chief administrative officer of the department, and he shall in addition perform those functions that are delegated to him by the board of health and environmental sciences.

History: En. 82A-608 by Sec. 1, Ch. 272, L. 1971.

82A-609. Additional agencies abolished. The following agencies are abolished:

(1) The venereal disease and immunization advisory committee, administratively created.

(2) The laboratory advisory committee, administratively created.

(3) The migrant health advisory committee, administratively created.

(4) The hearing conservation advisory committee, administratively created.

(5) The family planning advisory committee, administratively created.

(6) The joint staff committee, administratively created.

(7) The interdepartmental council on mental retardation, administratively created.

(8) The radiation advisory committee, provided for in section 69-5805, R. C. M. 1947.

(9) The hospital and long-term care facilities advisory council, provided for in section 69-5214, R. C. M. 1947.

History: En. 82A-609 by Sec. 1, Ch. 272, L. 1971.

82A-610. Sanitarian advisory council abolished. The sanitarian advisory council, created in section 69-3402, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 78, L. 1973.

Title of Act

An act abolishing the sanitarian advisory council.

CHAPTER 7—DEPARTMENT OF HIGHWAYS

Section
82A-701. Department of highways—creation—head.
82A-702. Agencies abolished—functions transferred to department.
82A-703. Functions of highway commission transferred to department.
82A-704. Board of highway appeals—creation—allocation—composition—designation.
82A-705. Functions transferred to board of highway appeals.
82A-706. Highway commission—continued—designation.
82A-707. Director of highways—creation.
82A-708. Additional agencies abolished.

82A-701. Department of highways—creation—head. There is created a department of highways. The department head is the director of highways provided for in section 82A-707 of this chapter.

History: En. 82A-701 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 12-71, dated Dec. 15, 1971, effective Dec. 16, 1971.

82A-702. Agencies abolished—functions transferred to department. (1) The highway department, provided for in Title 32, chapter 25, R. C. M. 1947, is abolished, and its functions are transferred to the department of highways created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the highway department means the department of highways created in this chapter.

(2) The position of state highway administrator, created in Title 32, chapter 25, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state highway administrator means the department of highways created in this chapter.

(3) The Montana toll bridge authority, created in Title 32, chapter 27, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana toll bridge authority means the department of highways created in this chapter.

(4) The Montana motor vehicle reciprocity board, created in Title 53, chapter 7, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of highway appeals in section 82A-705 of this chapter, are transferred to the department.
Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana motor vehicle reciprocity board, except the references relating to the quasi-judicial functions transferred to the board of highway appeals in section 82A-705 of this chapter, means the department of highways created in this chapter.

History: En. 82A-702 by Sec. 1, Ch. 272, L. 1971.

82A-703. Functions of highway commission transferred to department. The functions of the highway commission, which is provided for in Title 32, chapter 24, R. C. M. 1947, except its functions acting as the Montana highway patrol board, contained in Title 31, chapter 1, R. C. M. 1947, transferred to the department of justice or the attorney general in chapter 12 of this act, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the highway commission, except the references in Title 31, chapter 1, R. C. M. 1947, to the commission acting as the Montana highway patrol board, means the department of highways created in this chapter.

History: En. 82A-703 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 3, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety."

82A-704. Board of highway appeals—creation—allocation—composition—designation. (1) There is created a board of highway appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of grievances of personnel of the department, and for the hearing of disputes that may result from the administration and enforcement of proportional registration agreements under Title 53, chapter 7, R. C. M. 1947.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-704 by Sec. 1, Ch. 272, L. 1971.

82A-705. Functions transferred to board of highway appeals. The quasi-judicial functions of the Montana motor vehicle reciprocity board, which are contained in Title 53, chapter 7, R. C. M. 1947 (pertaining to reciprocity and proportional registration of motor vehicles), are transferred to the board of highway appeals. Unless inconsistent with this act, any reference in Title 53, chapter 7, R. C. M. 1947, to the Montana motor vehicle reciprocity board relating to the quasi-judicial functions transferred to the board of highway appeals means the board of highway appeals.

History: En. 82A-705 by Sec. 1, Ch. 272, L. 1971.

82A-706. Highway commission — continued — designation. (1) The highway commission, provided for in Title 32, chapter 24, R. C. M. 1947, is continued.

(2) The commission is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-706 by Sec. 1, Ch. 272, L. 1971.

82A-707. Director of highways—creation. There is created the position of director of highways. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads. Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the highway commission. The director is the chief administrative officer of the department, and in addition he shall perform those functions that are delegated to him by the commission.

History: En. 82A-707 by Sec. 1, Ch. 272, L. 1971.

82A-708. Additional agencies abolished. The following agencies are abolished:

(1) The Montana fact-finding committee on highways, streets, and bridges, created in Laws of Montana, 1955, chapter 99, at 196.

(2) The Montana council for highway research, created in Laws of Montana, 1955, chapter 99, at 196.

(3) The highway joint-development council, administratively created.

History: En. 82A-708 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 8—DEPARTMENT OF INSTITUTIONS

Section
82A-801. Department of institutions—creation—head.
82A-802. Department of institutions abolished—functions transferred to department.
82A-803. Functions of board of institutions transferred to department.
82A-804. Board of pardons—continued—transfer—designation—administrator.
82A-805. Board of eugenics—continued—transfer—designation.
82A-806. Board of institutions—continued—transfer—functions—designation.
82A-807. Agencies abolished.

82A-801. Department of institutions—creation—head. There is created a department of institutions. The department head is a director of institutions appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-801 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 13-71, dated Dec. 16, 1971, effective Dec. 17, 1971.

82A-802. Department of institutions abolished—functions transferred to department. The state department of institutions, created in Title 80, chapter 14, R. C. M. 1947, and its units are abolished, and their functions, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The functions with respect to the position of registrar of motor vehicles, trailers and semitrailers, which is created in Title 53, chapter 1, R. C. M. 1947, transferred to the department of justice in chapter 12 of this act.

(2) The functions with respect to the state bureau of criminal identification and investigation, which is provided for in Title 80, chapter 30 [20], R. C. M. 1947, transferred to the department of justice in chapter 12 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state department of institutions or its units means the department of institutions created in this chapter.

History: En. 82A-802 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 250, L. 1973.

Compiler's Notes

The compiler has inserted the bracketed number "20" in subsection (2).

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in subsections (1) and (2).

82A-803. Functions of board of institutions transferred to department. The functions of the state board of institutions, which is provided for in Title 80, chapter 14, R. C. M. 1947, except those enumerated below, are transferred to the department of institutions created in this chapter:

(1) The quasi-judicial functions continued in the board under section 82A-806 of this chapter.

(2) The functions of the board with respect to the position of registrar of motor vehicles, trailers and semitrailers, which is created in Title 53, chapter 1, R. C. M. 1947, transferred to the department of justice in chapter 12 of this act.

(3) The functions of the board with respect to the state bureau of criminal identification and investigation, which is created in Title 80, chapter 20, R. C. M. 1947, transferred to the department of justice in chapter 12 of this act.

Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of institutions, means the department of institutions created in this chapter.

History: En. 82A-803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 5, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in subsections (2) and (3).

82A-804. Board of pardons—continued—transfer—designation—administrator. (1) The state board of pardons, created in Title 94, chapter 98, R. C. M. 1947, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

(4) The position of state director of probation and parole, provided for in Title 94, chapter 98, R. C. M. 1947, is renamed the administrator of probation and parole.

History: En. 82A-804 by Sec. 1, Ch. 272, L. 1971.

82A-805. Board of eugenics—continued—transfer—designation. (1) The state board of eugenics, created in Title 69, chapter 64, R. C. M. 1947, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-805 by Sec. 1, Ch. 272, L. 1971.

82A-806. Board of institutions—continued—transfer—functions—designation. (1) The state board of institutions, created in Title 80, chapter 14, R. C. M. 1947, is continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board shall act in an advisory capacity to the department.

(4) The board shall continue to act in a quasi-judicial capacity for the hearing of disputes concerning the state's custodial institutions within the department, including the hearing of grievances of inmates and personnel of the institutions. No quasi-judicial function exercised by the board may infringe upon statutory functions of the board of pardons.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-806 by Sec. 1, Ch. 272, L. 1971.

82A-807. Agencies abolished. The following agencies are abolished:

(1) The Boulder River school construction committee, provided for in Laws of Montana, 1963, H. B. 428.

(2) The council of superintendents, provided for in section 80-1406, R. C. M. 1947.

(3) The institutional chaplaincy advisory committee, administratively created.

(4) The advisory council to the state prison and the advisory council to the veterans' home, provided for in section 80-1406, R. C. M. 1947.

History: En. 82A-807 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 9—DEPARTMENT OF INTERGOVERNMENTAL RELATIONS

Section

82A-901. Department of intergovernmental relations—creation—head.
82A-902. Agencies abolished—functions transferred to department.
82A-903. Additional functions transferred to department.
82A-904. County printing commission—continued—transfer—renamed board of county printing—composition.
82A-905. State aeronautics commission—continued—renamed board of aeronautics—transfer—functions—designation.
82A-906. Governor's highway traffic safety task force abolished.

82A-901. Department of intergovernmental relations—creation—head. There is created a department of intergovernmental relations. The department head is a director of intergovernmental relations appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-901 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 4-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-902. Agencies abolished—functions transferred to department. (1) The Montana highway traffic safety board, created in Title 32,

chapter 46, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway traffic safety board means the department of intergovernmental relations.

(2) The department of planning and economic development and the planning and development commission, created in Title 82, chapter 37, R. C. M. 1947, are abolished, and their functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of planning and economic development or the planning and development commission means the department of intergovernmental relations.

(3) The state office of economic opportunity, administratively created, is abolished, and its functions are transferred to the department.

History: En. 82A-902 by Sec. 1, Ch. 272, L. 1971.

82A-903. Additional functions transferred to department. (1) The functions of the state aeronautics commission, which is created in Title 1, chapter 2, R. C. M. 1947, except the quasi-judicial and quasi-legislative functions retained in the commission under section 82A-905 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state aeronautics commission, except references relating to the quasi-judicial and quasi-legislative functions retained in the commission under section 82A-905 of this chapter, means the department of intergovernmental relations.

(2) The office of state co-ordinator of Indian affairs, created in Title 82, chapter 27, R. C. M. 1947, and the functions of the office, are transferred to the department.

(3) The functions of the state examiner with respect to the political subdivisions of the state and their officers and employees, contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the department:

(a) Title 82, chapter 10 (pertaining to the general duties of the state examiner).

(b) Sections 5-907 and 5-910 (pertaining to examination of political subdivisions).

(c) Section 6-205 (pertaining to bonding of county officers and employees).

(d) Section 6-603 (pertaining to bonding of city or town officers or employees).

(e) Section 11-806 (pertaining to financial statements of cities or towns).

(f) Sections 11-1403, 11-1404, 11-1406, and 11-1411 (pertaining to the budget systems of cities or towns).

(g) Sections 11-1914 and 11-1923 (pertaining to investments by and examination of fire department relief associations).

(h) Section 11-3129 (pertaining to examination of cities operating under the commission form of government).

(i) Section 11-3253 (pertaining to auditing of cities operating under the commission-manager form of government).

(j) Sections 16-1901, 16-1902, 16-1903, 16-1904, and 16-1909 (pertaining to budget systems of counties).

(k) Sections 16-2001 and 16-2049 (pertaining to county finance).

(l) Sections 16-2618, 16-2621, and 16-2625 (pertaining to deposit of public funds).

(m) Sections 16-2924 and 16-2925 (pertaining to examining financial conditions of counties).

(n) Section 16-3916 (pertaining to auditing of counties operating under the county-manager form of government).

(o) Section 32-21-174 (pertaining to inspecting accounts of the interstate vehicle equipment safety commission).

(p) Sections 59-514 and 59-515 (pertaining to approval of destruction of city or town records).

(q) Section 75-1632 (pertaining to recommending bookkeeping by school trustees).

(r) Section 75-3737 (pertaining to establishing an on-farm training account).

(s) Sections 89-1215 and 89-2107 (pertaining to examination of irrigation districts).

(t) Section 89-3422 (pertaining to examination of conservancy districts).

However, in accordance with article VII, section 8 of the Montana constitution, the state examiner retains the function of examining the accounts of the state treasurer, supreme court clerks, district court clerks, and county treasurers. Unless inconsistent with this act, any reference in the citations enumerated above in this subsection to the state examiner relating to the functions transferred to the department means the department of intergovernmental relations.

History: En. 82A-903 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Sections 75-1632 and 75-3737, referred to in subdivisions (3) (q) and (3) (r) of this section, were repealed by sec. 496, Ch. 5, Laws 1971. Functions of the state examiner with respect to school districts are now set forth in sec. 75-6807.

Section 5-907, referred to in subdivision (3)(b), was repealed by Sec. 6, Ch. 256, Laws 1971. Section 16-3916, referred to in subdivision (3)(n), was repealed by Sec. 23, Ch. 123, Laws 1973.

82A-904. County printing commission—continued—transfer—renamed board of county printing—composition. (1) The county printing commission, provided for in Title 16, chapter 12, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of county printing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the county printing commission means the board of county printing.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 16-1227, R. C. M. 1947. Members shall be compensated

and reimbursed as are members of advisory councils in section 82A-110 of this act.

History: En. 82A-904 by Sec. 1, Ch. 272, L. 1971.

82A-905. State aeronautics commission—continued—renamed board of aeronautics—transfer—functions—designation. (1) The state aeronautics commission, created in Title 1, chapter 2, R. C. M. 1947, is continued, and the commission is renamed the board of aeronautics.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board shall act in an advisory capacity to the department on those matters relating to the functions of the aeronautics commission transferred to the department in section 82A-903 of this chapter.

(4) The board retains the quasi-judicial and quasi-legislative functions contained in sections 1-322 through 1-324, R. C. M. 1947 (pertaining to granting and suspending certificates of public convenience and necessity for air carriers, setting rates, and related matters). Unless inconsistent with this act, any reference in Title 1, chapter 2, R. C. M. 1947, to the state aeronautics commission relating to the quasi-judicial and quasi-legislative functions retained in the board means the board of aeronautics.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-905 by Sec. 1, Ch. 272, L. 1971.

82A-906. Governor's highway traffic safety task force abolished. The governor's highway traffic safety task force, administratively created, is abolished.

History: En. 82A-906 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 10—DEPARTMENT OF LABOR AND INDUSTRY

Section

82A-1001. Department of labor and industry—creation—head.
82A-1002. Agencies abolished—functions transferred to department.
82A-1003. Additional functions transferred to the department.
82A-1004. Division of workmen's compensation—creation—head.
82A-1005. Agencies abolished—functions transferred to division of workmen's compensation.
82A-1006. Division of employment security—creation—head—bureaus.
82A-1007. Employment security commission abolished—functions transferred to division of employment security.
82A-1008. Board of labor appeals—creation—allocation—composition—function—designation.
82A-1009. Functions transferred to board of labor appeals.
82A-1010. Additional agencies abolished.
82A-1011. Occupational health advisory committee abolished.
82A-1014. Board of personnel appeals created.

82A-1001. Department of labor and industry—creation—head. There is created a department of labor and industry. As prescribed in article XVIII, section 1 of the Montana constitution, the department head is the

commissioner of labor and industry. The commissioner holding office before the effective date of this chapter continues as the commissioner of the department of labor and industry created by this chapter for the remainder of his term. The commissioner shall be appointed and serve as provided in article XVIII, section 1 of the Montana constitution.

History: En. 82A-1001 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 11-71, dated Dec. 10, 1971, effective Dec. 13, 1971.

82A-1002. Agencies abolished—functions transferred to department. (1) The department of labor and industry, created in Title 41, chapter 16, R. C. M. 1947, and its units are abolished, and their functions are transferred to the department of labor and industry created in this chapter. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of labor and industry or its units means the department of labor and industry created in this chapter.

(2) The apprenticeship council, provided for in Title 41, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the apprenticeship council means the department of labor and industry created in this chapter.

(3) The commission on the status of women, administratively created, is abolished, and its functions are transferred to the department.

History: En. 82A-1002 by Sec. 1, Ch. 272, L. 1971.

82A-1003. Additional functions transferred to the department. (1) The functions of the state board of health, which are contained in Title 41, chapter 22, R. C. M. 1947 (pertaining to nurses' employment practices), are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 22, R. C. M. 1947, to the state board of health means the department of labor and industry created in this chapter.

(2) The functions of the state department of health relating to enforcing the industrial hygiene laws under section 69-4203(5), R. C. M. 1947, are transferred to the department of labor and industry created in this chapter. The department of labor and industry, on its own motion, or whenever it receives a notice of an alleged violation of the industrial hygiene laws or rules established thereunder from the department of health and environmental sciences, shall file a complaint of the alleged violation in the appropriate court and diligently pursue the action to its completion. Unless inconsistent with this act, any reference in Title 69, chapter 42, R. C. M. 1947, to the state department of health relating to its enforcement functions means the department of labor and industry created in this chapter.

History: En. 82A-1003 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Section 69-4203, referred to in subsection (2), was repealed by Sec. 18, Ch. 316, Laws 1971.

82A-1004. Division of workmen's compensation—creation—head. (1) There is created a division of workmen's compensation within the department. The division head is an administrator appointed by the governor as are directors in accordance with section 82A-106 of this act.

(2) The division is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the division may hire its own personnel, and section 82A-108(2)(d) does not apply.

History: En. 82A-1004 by Sec. 1, Ch. 272, L. 1971.

82A-1005. Agencies abolished—functions transferred to division of workmen's compensation. (1) The industrial accident board, created in Title 92, chapter 1, R. C. M. 1947, and its units, including the department of safety, created in Title 41, chapter 17, R. C. M. 1947, are abolished, and their functions, except the board's investment functions contained in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, are transferred to the division. The administrator of the division shall make the final determinations for workmen's compensation claims. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the industrial accident board or its units, except the references relating to the board's investment functions in Title 92, chapter 13, R. C. M. 1947, transferred to the board of investments in chapter 2 of this act, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(2) The advisory committee on boiler rules, created in Title 69, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the advisory committee on boiler rules means the division of workmen's compensation of the department of labor and industry created in this chapter.

(3) The board of examiners of applicants for coal mine foreman and mine examiner, and the board of examiners of applicants for state coal mine inspector, provided for in Title 50, chapter 4, R. C. M. 1947, are abolished, and their functions are transferred to the division. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of examiners of applicants for coal mine foreman and mine examiner and the board of examiners of applicants for state coal mine inspector, means the division of workmen's compensation of the department of labor and industry created in this chapter.

(4) The power line construction code committee, administratively created, is abolished, and its functions are transferred to the division.

History: En. 82A-1005 by Sec. 1, Ch. 272, L. 1971.

82A-1006. Division of employment security — creation — head — bureaus. (1) There is created a division of employment security within the department. The division head is an administrator appointed by the commissioner of labor and industry.

(2) Within the division of employment security are the following bureaus:

(a) The bureau of Montana state employment service.

(b) The bureau of unemployment insurance.

Each bureau shall be headed by a full-time chief appointed by the administrator. The administrator shall establish such other bureaus within the division as are required for the receipt of federal funds. Personnel of the division shall be employed in accordance with merit system standards.

History: En. 82A-1006 by Sec. 1, Ch. 272, L. 1971.

82A-1007. Employment security commission abolished—functions transferred to division of employment security. The employment security commission of Montana, created in Title 87, chapter 1, R. C. M. 1947, and its units are abolished, and their functions, except the quasi-judicial functions transferred to the board of labor appeals in section 82A-1009 of this chapter, are transferred to the division of employment security.

History: En. 82A-1007 by Sec. 1, Ch. 272, L. 1971.

82A-1008. Board of labor appeals—creation—allocation—composition—function—designation. (1) There is created a board of labor appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board is composed of three (3) members of the public, who are not employees of the state government, appointed by the governor as prescribed in section 82A-112 of this act.

(4) The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

(5) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971.

82A-1009. Functions transferred to board of labor appeals. The quasi-judicial functions of the employment security commission of Montana, contained in Title 87, chapter 1, R. C. M. 1947 (pertaining to the unemployment compensation laws), are transferred to the board. Unless inconsistent with this act, any reference in Title 87, chapter 1, R. C. M. 1947, to the employment security commission of Montana relating to the quasi-judicial functions transferred to the board of labor appeals means the board of labor appeals.

History: En. 82A-1009 by Sec. 1, Ch. 272, L. 1971.

82A-1010. Additional agencies abolished. The following agencies are abolished:

(1) The labor-safety study commission, provided for in Title 41, chapter 21, R. C. M. 1947.

(2) The state board of arbitration and conciliation, created in Title 41, chapter 9, R. C. M. 1947.

History: En. 82A-1010 by Sec. 1, Ch. 272, L. 1971.

82A-1011. Occupational health advisory committee abolished. The occupation health advisory committee, created in section 69-4210, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 225, L. 1973.

Title of Act

An act abolishing the occupation health advisory committee.

82A-1014. Board of personnel appeals created. (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five (5) members appointed by the governor as prescribed in section 82A-112. Two (2) members shall represent management, two (2) members shall represent employees or employee organizations of the state, and one (1) member shall represent a neutral position.

(4) Any employee or his representative affected by the operation of this act is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board. The board may instruct the department to take corrective action that may be necessary to resolve grievances that are found to be legitimate.

History: En. 82A-1014 by Sec. 15, Ch. 440, L. 1973.

CHAPTER 11—DEPARTMENT OF STATE LANDS

Section
82A-1101. Department of state lands—head.
82A-1101.1. Functions of department.
82A-1104. Commissioner of state lands.

82A-1101. Department of state lands—head. There is a department of state lands. The department head is the board of land commissioners, provided for in article X, section 4 of the constitution of this state.

History: En. 82A-1101 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 113, Ch. 428, L. 1973.

Amendments

The 1973 amendment rewrote the second sentence which formerly read "The department head is the state board of land commissioners, created in article XI, section 4 of the Montana constitution"; and made a minor change in style.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-71, dated July 26, 1971, effective Aug. 1, 1971.

82A-1101.1. Functions of department. The department has responsibility for the administration of laws relating to state lands, including, but not limited to, laws on:

(1) Selection, classification, appraisal, and exchange of lands (Title 81, chapter 3);

(2) Leasing of agricultural lands (Title 81, chapter 4);

(3) Coal mining leases and permits (Title 81, chapter 5);

(4) Prospecting permits and mining lease (Title 81, chapter 6);

(5) Leases and permits for deposits of stone, gravel, sand, and other minerals (Title 81, chapter 7);

(6) Granting of easements for public purposes (Title 81, chapter 8);

(7) Sale of state lands (Title 81, chapter 9);

(8) Timber sales (Title 81, chapter 16);

(9) Oil and gas leases (Title 81, chapter 17);

(10) Hydroelectric power sites (Title 81, chapter 18);

(11) Exchange of timbered, cut, or burned over lands (Title 81, chapter 22);

(12) Resource development (Title 81, chapter 24);

(13) Mined land reclamation (Title 50, chapters 10 and 12).

History: En. 82A-1101.1 by Sec. 114, Ch. 428, L. 1973.

Title of Act

An act for the codification and general revision of the laws relating to the department of state lands, and providing that this act is effective upon its passage and approval.

82A-1102, 82A-1103. Repealed.

Repeal

Sections 82A-1102, 82A-1103 (Sec. 1, Ch. 272, L. 1971), relating to functions of the department of state lands, were repealed by Sec. 116, Ch. 428, Laws 1973.

82A-1104. Commissioner of state lands. (1) There is a commissioner of state lands.

(2) The commissioner is the chief administrative officer of the department, and under the direction of the board of land commissioners he is responsible for the administration of the functions vested in the department. He shall also perform those functions that are delegated to him by the board.

(3) The commissioner shall be appointed and serve as provided for directors in section 82A-106.

History: En. 82A-1104 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 115, Ch. 428, L. 1973.

Amendments

The 1973 amendment divided subsection (2) into two sentences; inserted "and" following "administrative officer of the department" in the first sentence of subsection (2); deleted "state" before "board of land commissioners" in the first sentence of subsection (2); inserted "he is responsible for the administration of the functions vested in the department" at the end of the first sentence in subsection (2); and made minor changes in style and phraseology.

Repealing Clause

Section 116 of Ch. 428, Laws 1973 read "Sections 50-1101 through 50-1114, 81-101, 81-201 through 81-203, 81-204.1, 81-207 through 81-210, 81-305, 81-306, 81-422.1, 81-618 through 81-620, 81-916, 81-934 through 81-942, 81-1301, 81-1702.3, 81-1703, 81-1713, 81-1714, 81-1724, 81-2304, 82-904, 82A-1102, 82A-1103, and 83-105, R. C. M. 1947, are repealed."

CHAPTER 12—DEPARTMENT OF JUSTICE

Section

82A-1201. Department of justice—creation—head.
82A-1202. Agencies abolished—functions transferred to department.
82A-1203. Additional functions transferred to department.
82A-1204. Division of motor vehicles—creation.
82A-1205. Agencies abolished—functions transferred to division.

82A-1206. Functions of highway patrol and highway patrol chief transferred to division.
82A-1207. Board of crime control—creation—continued—transfer—composition.
82A-1208. Fire prevention advisory commission abolished.
82A-1209. References.

82A-1201. Department of justice—creation—head. There is created a department of justice. The department head is the attorney general.

History: En. 82-1201 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 6, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in the first sentence.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-72, dated Aug. 30, 1972, effective Sept. 1, 1972.

82A-1202. Agencies abolished—functions transferred to department. (1) The state bureau of criminal identification and investigation, provided for in Title 80, chapter 20, R. C. M. 1947, is abolished, and its statutory functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state bureau of criminal identification and investigation means the department of justice.

(2) The position of criminal investigator created within the office of the attorney general in Title 82, chapter 4, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of criminal investigator means the department of justice.

(3) The state law enforcement teletypewriter communications committee, provided for in Title 82, chapter 39, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the law enforcement teletypewriter communications committee means the department of justice.

(4) The Montana law enforcement academy advisory board, provided for in Title 75, chapter 52, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana law enforcement academy advisory board means the department of justice.

(5) The office of state fire marshal, created in Title 82, chapter 12, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state fire marshal means the department of justice.

(6) The state building code council, created in Title 69, chapter 21, R. C. M. 1947, is abolished, and its functions are transferred to the department of administration. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state building code council means the department of administration.

History: En. 82A-1202 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 2, Ch. 211, L. 1973; amd. Sec. 7, Ch. 250, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 211 and once by Ch. 250.

Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 211, Laws of 1973, added "of administration" to the end of the first sentence in subsection (6) and substituted "administration" for "law enforcement and public safety" at the end of the second sentence of subsection (6).

Chapter 250, Laws of 1973, substituted "justice" for "law enforcement and public safety" throughout the section.

Effective Date

Section 3 of Ch. 211, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

82A-1203. Additional functions transferred to department. (1) The functions of the state electrical board of making inspections of electrical installations and issuing tags and charging fees therefor in section 66-2805(c)(i), R. C. M. 1947, and of establishing an electrical code in section 66-2802(i), R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board relating to its functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code means the department of justice.

(2) The functions of the state controller and the department of administration, which are contained in Title 69, chapter 21, R. C. M. 1947 (pertaining to the state building code), are transferred to the department. Unless inconsistent with this act, any reference in Title 69, chapter 21, R. C. M. 1947, to the state controller or the department of administration means the department of justice.

(3) The function of the secretary of state of registering machine guns in section 94-3108, R. C. M. 1947, is transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the secretary of state relating to his function of registering machine guns means the department of justice.

History: En. 82A-1203 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" throughout the section.

82A-1204. Division of motor vehicles—creation. There is created a division of motor vehicles within the department.

History: En. 82A-1204 by Sec. 1, Ch. 272, L. 1971.

82A-1205. Agencies abolished—functions transferred to division. (1) The position of registrar of motor vehicles, trailers and semitrailers, created in Title 53, chapter 1, R. C. M. 1947, is abolished, and the functions of the position, except the function of providing license plates for motor vehicles provided for in Title 53, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles. The function of providing license plates remains a function of the warden of the state prison. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the registrar of motor vehicles, trailers and semi-

trailers, except the references relating to the function of providing license plates, means the division of motor vehicles of the department of justice.

(2) The Montana highway patrol board, provided for in Title 31, chapter 1, R. C. M. 1947, is abolished, and its functions, except the function of appointing the highway patrol chief in section 31-104, R. C. M. 1947, which is hereby transferred to the attorney general, are transferred to the division of motor vehicles. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana highway patrol board means the division of motor vehicles of the department of justice, except references in section 31-104, R. C. M. 1947, relating to the function of appointing the highway patrol chief, where it means the attorney general.

History: En. 82A-1205 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" in subsections (1) and (2).

82A-1206. Functions of highway patrol and highway patrol chief transferred to division. The functions of the highway patrol, which is created in Title 31, chapter 1, R. C. M. 1947, and of the position of highway patrol chief, which is provided for in Title 31, chapter 1, R. C. M. 1947, are transferred to the division of motor vehicles.

History: En. 82A-1206 by Sec. 1, Ch. 272, L. 1971.

82A-1207. Board of crime control—creation—continued—transfer—composition. (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(3) The board is composed of sixteen (16) members appointed by the governor. The board shall be representative of state and local law-enforcement agencies and units of general local government.

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, the board shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare and safety. The board shall waive the minimum qualification standard for good cause shown.

(5) The members of the governor's crime control commission before the effective date of this chapter continue as members of the board of crime control for the remainder of the governor's term; thereafter members shall be appointed in accordance with section 82A-112(1)(b) of this act.

(6) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act, but section 82A-112(2)(b) does not apply.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973.

Amendments

The 1973 amendment added the second sentence to subsection (4).

Effective Date

Section 2 of Ch. 61, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved February 25, 1973.

82A-1208. Fire prevention advisory commission abolished. The fire prevention advisory commission, provided for in section 82-1201, R. C. M. 1947, is abolished.

History: En. 82A-1208 by Sec. 1, Ch. 272, L. 1971.

82A-1209. References. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the department of law enforcement and public safety means the department of justice.

History: En. 82A-1209 by Sec. 12, Ch. 250, L. 1973.

Title of Act

An act to change the name of the department of law enforcement and public safety to the department of justice; amending sections 82A-104, 82A-202, 82A-703, 82A-802, 82A-803, 82A-1201, 82A-1202, 82A-1203, 82A-1205, 82A-1602 and 82A-1605, R. C. M. 1947; adding a new section; and providing an effective date.

Effective Date

Section 13 of Ch. 250, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 9, 1973.

CHAPTER 13—DEPARTMENT OF LIVESTOCK

Section

82A-1301. Department of livestock—creation—head.
82A-1302. Functions transferred to department.
82A-1303. Livestock commission—continued—renamed board of livestock—composition.
82A-1304. Livestock sanitary board abolished—Functions transferred to board of livestock.
82A-1305. Advisory committee on predatory animal control abolished.

82A-1301. Department of livestock—creation—head. There is created a department of livestock. The department head is the board of livestock provided for in section 82A-1303 of this chapter.

History: En. 82A-1301 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 8-71, dated Nov. 19, 1971, effective Nov. 22, 1971.

82A-1302. Functions transferred to department. The functions of the department of agriculture and of the commissioner of agriculture, which are contained in the citations of the Revised Codes of Montana, 1947, enumerated below, are transferred to the department:

(1) Title 3, chapter 22 (pertaining to poultry improvement), chapter 23 (pertaining to eggs and egg dealers), chapter 24 (pertaining to dairy products), and chapter 25 (pertaining to quality labels).

(2) Title 27, chapter 5 (pertaining to oleomargarine regulation).

Unless inconsistent with this act, any reference in Title 3, chapters 22 through 24, and in Title 27, chapter 5, R. C. M. 1947, to the department

of agriculture or the commissioner of agriculture means the department of livestock. Unless inconsistent with this act, any reference in Title 3, chapter 25, R. C. M. 1947, to the department of agriculture or the commissioner of agriculture means the department of livestock or the department of agriculture created in chapter 3 of this act, whichever is applicable.

History: En. 82A-1302 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Chapter 22 of Title 3, referred to in subdivisions (1) and (2), was repealed by Sec. 6, Ch. 46, Laws 1957 and Sec. 1, Ch. 138, Laws 1973.

82A-1303. Livestock commission—continued—renamed board of livestock—composition. (1) The livestock commission, provided for in Title 46, chapter 1, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of livestock. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the livestock commission means the board of livestock.

(2) Members of the board before the effective date of this chapter continue as members for the remainder of their terms. The composition, method of selection, and terms of office of members of the board remain as prescribed in section 46-101, R. C. M. 1947, except:

(a) An appointee is vested with all the powers and duties of his office before being confirmed by the senate, as are directors in section 82A-106(2) of this act.

(b) The governor shall designate the chairman of the board.

(3) Members of the board shall be reimbursed and compensated as are members of quasi-judicial boards in section 82A-112(1)(e) of this act.

History: En. 82A-1303 by Sec. 1, Ch. 272, L. 1971.

82A-1304. Livestock sanitary board abolished—functions transferred to board of livestock. The livestock sanitary board, provided for in Title 46, chapter 2, R. C. M. 1947, is abolished, and its functions are transferred to the board of livestock. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the livestock sanitary board means the board of livestock.

History: En. 82A-1304 by Sec. 1, Ch. 272, L. 1971.

82A-1305. Advisory committee on predatory animal control abolished. The advisory committee on predatory animal control, provided for in section 46-1903, R. C. M. 1947, is abolished.

History: En. 82A-1305 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 14—DEPARTMENT OF MILITARY AFFAIRS

Section

82A-1401. Department of military affairs—creation—head.
82A-1402. Agencies abolished—functions transferred to department.

82A-1403. Functions of adjutant general transferred to department.
82A-1404. Additional agencies abolished.

82A-1401. Department of military affairs—creation—head. There is created a department of military affairs. The department head is the adjutant general of the state, who shall be appointed and serve in the same manner as are directors in section 82A-106 of this act. In addition, the qualifications of the adjutant general remain as prescribed in section 77-117, R. C. M. 1947.

History: En. 82A-1401 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 1-71, dated June 25, 1971, effective July 1, 1971.

82A-1402. Agencies abolished—functions transferred to department. (1) The adjutant general's department, provided for in Title 77, chapter 1, R. C. M. 1947, is abolished, and its functions are transferred to the department of military affairs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the adjutant general's department means the department of military affairs.

(2) The state civil defense agency, created in Title 77, chapter 13, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state civil defense agency means the department of military affairs.

(3) The position of director of civil defense, created in Title 77, chapter 13, R. C. M. 1947, is abolished, and the functions of the position are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of director of civil defense means the department of military affairs.

(4) The office of emergency resource management, created in Title 77, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of emergency resource management means the department of military affairs.

(5) The office of state emergency planning director, provided for in Title 77, chapter 15, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the office of state-emergency planning director means the department of military affairs.

History: En. 82A-1402 by Sec. 1, Ch. 272, L. 1971.

82A-1403. Functions of adjutant general transferred to department. The functions of the position of adjutant general, which is created in Title 77, chapter 1, R. C. M. 1947, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of adjutant general means the department of military affairs.

History: En. 82A-1403 by Sec. 1, Ch. 272, L. 1971.

82A-1404. Additional agencies abolished. The following agencies are abolished:

(1) The civil defense advisory council, created in section 77-1305, R. C. M. 1947.

(2) The state emergency resource planning committee, provided for in section 77-1504, R. C. M. 1947.

(3) The training and education co-ordination committee, administratively created.

History: En. 82A-1404 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 15—DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Section

82A-1501. Department of natural resources and conservation—creation—head.
82A-1502. Agencies abolished—functions transferred to department.
82A-1503. Additional functions transferred to department.
82A-1504. Divisions of water resources, forestry and conservation districts—creation.
82A-1505. Agencies abolished—functions transferred to divisions.
82A-1506. Additional functions transferred to division.
82A-1507.1. State conservation committee abolished.
82A-1508. Oil and gas conservation commission—continued—renamed board of oil and gas—transfer—designation.
82A-1509. Board of natural resources and conservation—creation—composition—designation.
82A-1510. Director of natural resources and conservation—creation.
82A-1511. Additional agencies abolished.
82A-1512. Mined land reclamation advisory committee abolished.

82A-1501. Department of natural resources and conservation—creation—head. There is created a department of natural resources and conservation. The department head is the director of natural resources and conservation provided for in section 82A-1508 of this chapter.

History: En. 82A-1501 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 14-71, dated Dec. 17, 1971, effective Dec. 20, 1971.

82A-1502. Agencies abolished—functions transferred to department. The Montana grass conservation commission, created in Title 46, chapter 23, R. C. M. 1947, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana grass conservation commission means the department of natural resources and conservation.

History: En. 82A-1502 by Sec. 1, Ch. 272, L. 1971.

82A-1503. Additional functions transferred to department. (1) The functions of the state board of health, which are contained in Title 50, chapter 11, R. C. M. 1947 (pertaining to dredge mining regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 50, chapter 11, R. C. M. 1947, to the state board of health means the department of natural resources and conservation.

(2) The functions of the Montana bureau of mines and geology, which are contained in Title 50, chapter 10, R. C. M. 1947 (pertaining to strip coal-mining regulation), are transferred to the department. Unless inconsistent with this act, any reference in Title 50, chapter 10, R. C. M. 1947, to the Montana bureau of mines and geology means the department of natural resources and conservation.

History: En. 82A-1503 by Sec. 1, Ch. 272, L. 1971.

Compiler's Notes

Chapter 11 of Title 50, referred to in subsection (1), was repealed by Sec. 116, Ch. 428, Laws 1973.

82A-1504. Divisions of water resources, forestry and conservation districts—creation. (1) The following divisions of the department are created:

(a) Division of water resources.

(b) Division of forestry.

(c) Division of conservation districts.

(2) Each division shall be headed by an administrator. The administrator of the division of forestry shall be technically trained and experienced in forestry and a graduate of an accredited forestry school.

History: En. 82A-1504 by Sec. 1, Ch. 272, L. 1971.

82A-1505. Agencies abolished—functions transferred to divisions. (1) The Montana water resources board and its units, created in Title 89, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the division of water resources. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana water resources board or its units means the division of water resources of the department of natural resources and conservation.

(2) The Montana state board of forestry and its units, created in Title 28, chapter 1, R. C. M. 1947, are abolished, and their functions are transferred to the division of forestry. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of forestry means the division of forestry of the department of natural resources and conservation.

(3) The position of state forester, provided for in Title 81, chapter 14, R. C. M. 1947, is abolished, and the functions of the position are transferred to the division of forestry. However, as prescribed in article XI, section 4 of the Montana constitution and in section 81-103, R. C. M. 1947, the state board of land commissioners continues to retain the direction, control, leasing and sale of the state school lands and the land granted for the support and benefit of the various educational institutions and state lands; any functions performed by the division of forestry relating to these lands are subject to the direction and control of the state board of land commissioners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the position of state forester means the division of forestry within the department of natural resources and conservation.

History: En. 82A-1505 by Sec. 1, Ch. 272, L. 1971.

82A-1506. Additional functions transferred to division. The functions of the state soil conservation committee, created in Title 76, chapter 1, R. C. M. 1947, are transferred to the division of conservation districts. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state soil conservation committee means the division of conservation districts of the department of natural resources and conservation.

History: En. 82A-1506 by Sec. 1, Ch. 272, L. 1971.

82A-1507. Repealed.

Repeal

Section 82A-1507 (Sec. 1, Ch. 272, L. 1971), relating to the continuation of the state soil conservation committee, was repealed by Sec. 2, Ch. 188, Laws 1973. For new law, see sec. 82A-1507.1.

82A-1507.1. State conservation committee abolished. The state conservation commission, formerly the soil conservation committee, created in section 76-104, R. C. M. 1947, and continued in section 82A-1507, R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 188, L. 1973.

Title of Act

An act abolishing the state conservation commission, formerly the soil conservation committee; and repealing section 82A-1507, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 188, Laws 1973 read "Section 82A-1507, R. C. M. 1947, is repealed."

82A-1508. Oil and gas conservation commission—continued—renamed board of oil and gas—transfer—designation. (1) The oil and gas conservation commission of the state of Montana, created in Title 60, chapter 1, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of oil and gas conservation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the oil and gas conservation commission of the state of Montana means the board of oil and gas conservation.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) of this act does not apply.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1508 by Sec. 1, Ch. 272, L. 1971.

82A-1509. Board of natural resources and conservation—creation—composition—designation. (1) There is created a board of natural resources and conservation.

(2) The board is composed of seven (7) members, appointed by the governor as prescribed in section 82A-112 of this act, informed and experienced in the subjects of natural resources and conservation. One member shall be appointed from each of the five (5) districts prescribed in section 26-102(1), R. C. M. 1947. The other two (2) members are members at large.

(3) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-1509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 384, L. 1973.

Compiler's Notes

Section 26-102, referred to in subsection (2), was repealed by Sec. 58, Ch. 511, Laws 1973.

Amendments

The 1973 amendment increased the number of members of the board from five to seven in subsection (2); and added the second sentence to subsection (2).

82A-1510. Director of natural resources and conservation—creation. There is created the position of director of natural resources and conservation. The director shall be appointed by the governor in the manner set forth in section 82A-106 of this act for directors who are department heads. Section 82A-107 of this act applies to the director as a department head, subject to the concurrence of the board of natural resources and conservation. The director is the chief administrative officer of the department, and in addition he shall perform those functions that are delegated to him by the board of natural resources and conservation.

History: En. 82A-1510 by Sec. 1, Ch. 272, L. 1971.

82A-1511. Additional agencies abolished. The following agencies are abolished:

(1) The council on natural resources and development, created in section 82-3001, R. C. M. 1947.

(2) The outdoor recreation advisory and planning committee, created in section 62-404, R. C. M. 1947.

(3) The weather modification advisory committee, provided for in section 89-312, R. C. M. 1947.

History: En. 82A-1511 by Sec. 1, Ch. 272, L. 1971.

82A-1512. Mined land reclamation advisory committee abolished. The mined land reclamation advisory committee, provided for in section 50-1021(11), R. C. M. 1947, is abolished.

History: En. Sec. 1, Ch. 77, L. 1973.

Compiler's Notes

Section 50-1021, referred to in this section was repealed by Sec. 26, Ch. 325, Laws 1973 and Sec. 17, Ch. 326, Laws 1973.

Title of Act

An act abolishing the mined land reclamation advisory committee.

CHAPTER 16—DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING

Section

82A-1601. Department of professional and occupational licensing—creation—head.
82A-1602. Department—agencies transferred to.
82A-1602.8. Board of cosmetologists—appointment—qualifications—term.
82A-1603. Department—duties.
82A-1604. Director—duties.
82A-1605. Boards within department—duties.
82A-1606. Board within department—composition, etc.
82A-1607. Electrical inspections and code making.

82A-1601. Department of professional and occupational licensing—creation—head. There is created a department of professional and occupational licensing. The department head is a director of professional and occupational licensing appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1601 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 2-72, dated July 31, 1972, effective Aug. 1, 1972.

82A-1602. Department—agencies transferred to. The following agencies are continued, are transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act, and are renamed as indicated:

(1) Abstracters board of examiners, created in Title 66, chapter 21, R. C. M. 1947, renamed the board of abstracters. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the abstracters board of examiners means the board of abstracters.

(2) State board of public accountancy, created in Title 66, chapter 18, R. C. M. 1947, renamed the board of public accountants. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of public accountancy means the board of public accountants.

(3) Board of architectural examiners, provided for in Title 66, chapter 1, R. C. M. 1947, renamed the board of architects. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of architectural examiners means the board of architects.

(4) State athletic commission, created in Title 82, chapter 3, R. C. M. 1947, renamed the board of athletics. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state athletic commission means the board of athletics.

(5) Board of barber examiners, created in Title 66, chapter 4, R. C. M. 1947, renamed the board of barbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of barber examiners means the board of barbers.

(6) State board of chiropody medical examiners or the board of chiropodists created in Title 66, chapter 6, R. C. M. 1947, and renamed in section 1, chapter 272, Laws of Montana, 1971, is renamed the state board of podiatry examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropody medical examiners or the board of chiropodists means the state board of podiatry examiners.

(7) State board of chiropractic examiners, created in Title 66, chapter 5, R. C. M. 1947, renamed the board of chiropractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of chiropractic examiners means the board of chiropractors.

(8) Montana state examining board of cosmetology, created in Title 66, chapter 8, R. C. M. 1947, renamed the board of cosmetologists. Unless inconsistent with this act, any reference in the Revised Codes of Montana,

1947, to the Montana state examining board of cosmetology means the board of cosmetologists.

(9) State board of dental examiners of the state of Montana, created in Title 66, chapter 9, R. C. M. 1947, renamed the board of dentists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of dental examiners of the state of Montana means the board of dentists.

(10) State electrical board, created in Title 66, chapter 28, R. C. M. 1947, renamed the board of electricians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state electrical board, except the references relating to the functions of making inspections of electrical installations and issuing tags and charging fees therefor or of establishing an electrical code, transferred to the department of justice in chapter 12 of this act, means the board of electricians.

(11) State board of registration for professional engineers and land surveyors, created in Title 66, chapter 23, R. C. M. 1947, renamed the board of professional engineers and land surveyors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of registration for professional engineers and land surveyors means the board of professional engineers and land surveyors.

(12) Montana board of hearing aid dispensers, created in Title 66, chapter 30, R. C. M. 1947, renamed the board of hearing aid dispensers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana board of hearing aid dispensers means the board of hearing aid dispensers.

(13) Montana horse racing commission, created in Title 62, chapter 5, R. C. M. 1947, renamed the board of horse racing. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana horse racing commission means the board of horse racing.

(14) State board of massage examiners, created in Title 66, chapter 29, R. C. M. 1947, renamed the board of masseurs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of massage examiners means the board of masseurs.

(15) Montana state board of medical examiners, created in Title 66, chapter 10, R. C. M. 1947, and renamed the board of medical doctors in section 1, chapter 272, Laws of Montana, 1971, is renamed the Montana state board of medical examiners. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of medical examiners or the board of medical doctors means the Montana state board of medical examiners.

(16) State board of morticians, created in Title 66, chapter 27, R. C. M. 1947, renamed the board of morticians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of morticians means the board of morticians.

(17) State board of examiners for nursing home administrators, created in Title 66, chapter 31, R. C. M. 1947, renamed the board of nursing home administrators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of exami-

ners for nursing home administrators means the board of nursing home administrators.

(18) Montana state board of nursing, created in Title 66, chapter 12, R. C. M. 1947, renamed the board of nurses. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of nursing means the board of nurses.

(19) Montana state board of examiners in optometry, created in Title 66, chapter 13, R. C. M. 1947, renamed the board of optometrists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of examiners in optometry means the board of optometrists.

(20) State board of osteopathic examiners, provided for in Title 66, chapter 14, R. C. M. 1947, renamed the board of osteopaths. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of osteopathic examiners means the board of osteopaths.

(21) Montana state board of pharmacy, created in Title 66, chapter 15, R. C. M. 1947, renamed the board of pharmacists. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of pharmacy means the board of pharmacists.

(22) Board of plumbing examiners (or the state plumbing board), provided for in Title 66, chapter 24, R. C. M. 1947, renamed the board of plumbers. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of plumbing examiners or the state plumbing board means the board of plumbers.

(23) Montana real estate commission, created in Title 66, chapter 19, R. C. M. 1947, renamed the board of real estate. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana real estate commission means the board of real estate.

(24) State board of veterinary medical examiners, created in Title 66, chapter 22, R. C. M. 1947, renamed the board of veterinarians. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state board of veterinary medical examiners means the board of veterinarians.

(25) Board of certification for water and waste water operators, provided for in Title 69, chapter 59, R. C. M. 1947, renamed the board of water and waste water operators. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of certification for water and waste water operators means the board of water and waste water operators.

(26) Water well contractors' examining board of the state of Montana, created in Title 66, chapter 26, R. C. M. 1947, renamed the board of water-well contractors. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the water-well contractors' examining board of the state of Montana means the board of water-well contractors.

History: En. 82A-1602 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 10, Ch. 250, L. 1973; amd. Sec. 1, Ch. 285, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 250 and once by Ch. 285.

Neither admendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 250, Laws 1973, substituted "justice" for "law enforcement and public safety" in subsection (10).

Chapter 285, Laws of 1973, inserted in the first sentence of subdivision (6) the citation to the Laws of 1971 and the clause again renaming the board; inserted "or the board of chiropodists" in the second sentence of subdivision (6); substituted "state board of podiatry examiners" for "board of chiropodists" at the end of subdivision (6); inserted in the first sentence of subdivision (15) the citation to the Laws of 1971 and the clause restoring the previous name; and reversed references to the "Montana state board of medical examiners" and to the "board of medical doctors" in the second sentence of subdivision (15).

82A-1602.8. (3228.4) **Board of cosmetologists—appointment—qualifications—term.** (1) There is a board of cosmetologists.

(2) The board consists of four (4) members appointed by the governor from a list of eight (8) persons recommended by the Montana state hairdressers' association. Each member shall have actively engaged in the profession of cosmetology for at least five (5) years before his appointment and have been a resident of this state for at least five (5) years immediately before his appointment. Each member shall be at least twenty-five (25) years old and a graduate of a high school or its equivalent. No two (2) members of the board shall be members of or affiliated with a school of cosmetology. The governor shall appoint a fifth member to the board who shall be an attorney licensed to practice law in this state.

(3) Each member shall serve for a term of four (4) years.

History: En. Sec. 4, Ch. 104, L. 1929; amd. Sec. 4, Ch. 222, L. 1939; amd. Sec. 4, Ch. 244, L. 1961; Sec. 66-804, R. C. M. 1947; redes. 82A-1602.8 and amd. by Sec. 1, Ch. 196, L. 1973.

Amendments

The 1973 amendment renumbered this section, formerly 66-804; rewrote the section, changing the name of the board from "state examining board of cosmetology" to "board of cosmetologists"; increased the number of cosmetologist members from three to four; increased the number of persons to be recommended by the Montana state hairdressers' association from six to eight; and added the provision for the appointment of the attorney member to the board.

82A-1603. Department—duties. In addition to the provisions of section 82A-108 of this act, the department shall:

(1) Provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing.

(2) Standardize and keep in Helena all official records of the boards.

(3) Make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board, or elsewhere in the state if requested by the board.

(4) Administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination.

(5) At the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department.

(6) Assess the costs of the department to the boards on a prorata basis according to the number of man days and the actual operating costs of the department for each board.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971.

82A-1604. Director—duties. In addition to his powers and duties under sections 82A-107 and 82A-108 of this act, the director shall:

(1) Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) Whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in section 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971.

82A-1605. Boards within department—duties. Except for the inspection and code-making functions of the state electrical board transferred to the department of justice and enumerated in chapter 12 of this act, and subject to the administrative control of the department and the director of professional and occupational licensing as set forth in section 82A-108 of this act and under this chapter, each agency transferred to the department shall continue to exercise its prescribed statutory functions. In addition, each board within the department shall:

(1) Set and enforce standards, rules, and regulations governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction.

(2) Sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under section 82A-1604(1) of this chapter.

(3) Pay to the department its pro rata share of the assessed costs of the department under section 82A-1603(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973.

Amendments

The 1973 amendment substituted "justice" for "law enforcement and public safety" near the beginning of the section.

82A-1606. Board within department—composition, etc. The members of boards within the department before the effective date of this chapter

continue as members for the remainder of their terms. The composition, qualifications, method of appointment, terms of office, compensation, and reimbursement of the members of the boards within the department remain as prescribed by law, except:

(1) The executive officer of the Montana state department of health, or his designee, and the administrator of the Montana state department of public welfare, or his designee, are replaced by the director of the department of health and environmental sciences, or his designee, and the director of the department of social and rehabilitation services, or his designee, respectively, on the Montana state board of examiners for nursing home administrators, renamed the board of nursing home administrators in this chapter.

(2) The appointed representative of the state board of health is replaced by the appointed representative of the department of health and environmental sciences on the board of plumbing examiners, renamed the board of plumbers in this chapter.

(3) The director of the division of environmental sanitation or a qualified member of his staff appointed by the director is replaced by the administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator on the board of certification for water and waste water operators, renamed the board of water and waste water operators in this chapter.

(4) The state engineer and the director of the division of environmental sanitation of the state board of health are replaced by the administrator of the division of water resources of the department of natural resources and conservation and the administrator of the division of environmental sciences of the department of health and environmental sciences, respectively, on the water well contractors' examining board of the state of Montana, renamed the board of water-well contractors in this chapter.

History: En. 82A-1606 by Sec. 1, Ch. 272, L. 1971.

82A-1607. Electrical inspections and code making. The functions of the department of law enforcement and public safety of making inspections of electrical installations and issuing tags and charging fees therefor as set forth in section 66-2805(c)(i) and of establishing an electrical code as set forth in section 66-2802(i), which were transferred to the department in section 82A-1203, are transferred to the department of professional and occupational licensing and the board of electricians, subject to the provisions of this act.

History: En. 82A-1607 by Sec. 1, Ch. 87, L. 1973.

Title of Act

An act transferring the functions of the department of law enforcement and public safety pertaining to electrical inspections and code making to the department of professional and occupational licensing, and providing an effective date.

Effective Date

Section 2 of Ch. 87, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 3, 1973.

CHAPTER 17—DEPARTMENT OF PUBLIC SERVICE REGULATION

Section
82A-1701. Department of public service regulation—creation—head.
82A-1702. Public service commission—continued—composition.
82A-1703. Board of railroad commissioners abolished—functions transferred to department.

82A-1701. Department of public service regulation—creation—head. There is created a department of public service regulation. The department head is the public service commission provided for in section 82A-1702 of this chapter.

History: En. 82A-1701 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 5-71, dated Sept. 9, 1971, effective Sept. 9, 1971.

82A-1702. Public service commission—continued—composition. (1) The public service commission, created in Title 70, chapter 1, R. C. M. 1947, and its functions are continued.

(2) The composition, method of selection, and terms of office of members of the commission remain as prescribed in section 72-101, R. C. M. 1947. Members of the board of railroad commissioners ex officio public service commission before the effective date of this chapter continue as members of the public service commission for the remainder of their terms.

History: En. 82A-1702 by Sec. 1, Ch. 272, L. 1971.

82A-1703. Board of railroad commissioners abolished—functions transferred to department. The board of railroad commissioners of the state of Montana, created in Title 72, chapter 1, R. C. M. 1947, is abolished, and its function are transferred to the public service commission. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the board of railroad commissioners means the public service commission.

History: En. 82A-1703 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 18—DEPARTMENT OF REVENUE

Section
82A-1801. Department of revenue—creation—head.
82A-1802. Additional functions transferred to department.
82A-1803. Advisory council for multi-state tax compact.
82A-1804. Director of revenue—creation.
82A-1806. Multistate tax compact advisory committee abolished.
82A-1807. Liquor control board abolished—functions transferred.
82A-1808. State tax appeal board—appeals concerning liquor and beer laws.

82A-1801. Department of revenue—creation—head. There is created a department of revenue. The department head is the director of revenue.

History: En. 82A-1801 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 62, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "director of revenue" for "state board of

equalization provided for in article XII, section 15 of the Montana constitution" at the end of the section.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 3-71, dated Aug. 4, 1971, effective Aug. 9, 1971.

82A-1802. Additional functions transferred to department. The functions of the secretary of state, which are contained in section 14-528, R. C. M. 1947 (pertaining to rural electric and telephone cooperatives license tax), are transferred to the department. Unless inconsistent with this act, any reference to the secretary of state in section 14-528, R. C. M. 1947, means the department of revenue.

History: En. 82A-1802 by Sec. 1, Ch. 272, L. 1971.

82A-1803. Advisory council for multi-state tax compact. The director of revenue shall appoint an advisory council for the purpose of complying with article VI, section 1(b) of the multi-state tax compact, section 84-6701, R. C. M. 1947. The council shall be appointed in accordance with the provisions of section 82A-110 of this act.

History: En. 82A-1803 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 63, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted former subsection (1) which continued the functions of the board of equalization; and substituted "director of revenue" for "board" at the beginning of the section.

82A-1804. Director of revenue—creation. (1) There is created the position of director of revenue.

(2) The director is the chief administrative officer of the department and in addition shall prepare revenue estimates of state revenue from all sources and shall continuously study fiscal problems and tax structures of state and local governments and submit the studies to the governor and legislative assembly at their request.

(3) The director of revenue shall be appointed and serve as provided for directors in section 82A-106 of this act.

History: En. 82A-1804 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 64, Ch. 391, L. 1973.

Amendments

The 1973 amendment deleted "under the direction of the state board of equalization and he shall perform those functions that are delegated to him by the board" following "chief administrative officer of the department."

82A-1805. Repealed.

Repeal

Section 82A-1805 (Sec. 1, Ch. 272, L. 1971), relating to the Montana liquor control board, was repealed by Sec. 3, Ch. 207, Laws 1973.

82A-1806. Multistate tax compact advisory committee abolished. The multistate tax compact advisory committee, provided for in section 84-6704, R. C. M. 1947, is abolished.

History: En. 82A-1806 by Sec. 1, Ch. 272, L. 1971.

82A-1807. Liquor control board abolished—functions transferred. The Montana liquor control board, created in Title 4, chapter 1, is abolished,

and its functions are transferred to the department of revenue. Unless inconsistent with this title, any reference in the Revised Codes of Montana, 1947, to the Montana liquor control board means the department of revenue.

History: En. 82A-1807 by Sec. 1, Ch. 207, L. 1973.

Title of Act

An act abolishing the liquor control board and transferring its functions to the department of revenue and board of equalization; repealing section 82A-1805, R. C. M. 1947; and providing an effective date.

82A-1808. State tax appeal board—appeals concerning liquor and beer laws. Any interested party shall have the right to appeal any decision of the department of revenue concerning the issuance, transfer, suspension or revocation of beer or liquor licenses to the state tax appeal board. The appeal shall be heard in conformity with the provisions of the Montana Administrative Procedure Act [82-4201 to 82-4225] and the decision of the state tax appeal board shall be final unless reversed or modified upon judicial review.

History: En. 82A-1808 by Sec. 2, Ch. 207, L. 1973; en. 82A-1808 by Sec. 64.1, Ch. 391, L. 1973.

Compiler's Notes

Chapter 207 and Chapter 391, Laws of 1973, both enacted sections numbered 82A-1808. The language of the two enactments is identical except that Ch. 391, the later enactment, substituted "state tax appeals board" for "state board of equalization." The language of Ch. 391 is used above.

Title of Act

An act to amend sections 4-354, 7-122, 15-2285, 15-22-112, 16-910, 16-2010, 16-3706, 16-3912, 16-3916, 25-605, 25-609, 32-2607, 32-3804, 50-1032, 50-1220, 51-303, 53-703, 53-1013, 53-1025, 59-1109, 59-1110, 66-223, 66-227, 67-2211, 67-2212, 67-2213, 67-2214, 67-2215, 67-2216, 67-2217, 67-2218, 67-2219, 67-2220, 67-2221, 67-2222, 67-2223, 67-2224, 67-2225, 67-2226, 67-2317, 67-2318, 67-2340, 67-2342, 69-3502, 69-3504, 69-3504.1, 69-3923, 69-6007, 71-236, 75-6410.1, 75-6711, 81-928, 81-930, 81-1115, 81-1116, 81-1117, 81-1118, 82-1501, 82-1506, 82-1512, 82-1925.1, 82A-1801, 82A-1803, 82A-1804, 82A-1808, 89-1812, 89-2401, 91-502, 91-504, 91-505, 91-506, 91-507, 91-508, 91-509, 91-523, 91-4321, 91-4414.1, 91-4415, 91-4418, 91-4419, 91-4421, 91-4423, 91-4425, 91-4426, 91-4427, 91-4428, 91-4429, 91-4430, 91-4431, 91-4437, 91-4438, 91-4439, 91-4440, 91-4442, 91-4443, 91-4444, 91-4445, 91-4446, 91-4447, 91-4448, 91-4449, 91-4450, 91-4451, 91-4454, 91-4455, 91-4459, 91-4460, 91-4461, 91-4462, 91-4463, 91-4464, 94-1506, and 94-35-260, R. C. M. 1947, to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by replacing the state board of equalization with a state tax appeal board, or liquor control board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 16-1016, 16-3703, and 91-4466, R. C. M. 1947.

Repealing Clause

Section 3 of Ch. 207, Laws 1973 read "Section 82A-1805, R. C. M. 1947, is repealed."

Effective Date

Section 4 of Ch. 207, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

CHAPTER 19—DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Section

82A-1901. Department of social and rehabilitation services—creation—head.
82A-1902. Agencies abolished—functions transferred to department.
82A-1903. Additional functions transferred to department.
82A-1904. County departments of public welfare—continued—supervision.
82A-1905. Veterans' welfare commission—continued—renamed board of veterans' affairs—transfer.
82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation.

82A-1907. Functions transferred to board of social and rehabilitation appeals.
82A-1908. Additional agencies abolished.

82A-1901. Department of social and rehabilitation services—creation—head. There is created a department of social and rehabilitation services. The department head is a director of social and rehabilitation services appointed by the governor in accordance with section 82A-106 of this act.

History: En. 82A-1901 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 6-71, dated Oct. 28, 1971, effective Nov. 1, 1971.

82A-1902. Agencies abolished—functions transferred to department. (1) The state department of public welfare and its units, including the state board of public welfare and the state administrator of public welfare, created in Title 71, chapter 2, R. C. M. 1947, are abolished, and their functions, except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the state department of public welfare, the state board of public welfare, or the state administrator of public welfare, except the references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, means the department of social and rehabilitation services.

(2) The division of vocational rehabilitation, created in Title 41, chapter 8, R. C. M. 1947, under the jurisdiction of the state board of education, is abolished, and its functions are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the division of vocational rehabilitation means the department of social and rehabilitation services.

(3) The commission on aging, created in Title 82, chapter 35, R. C. M. 1947, is abolished, and its functions, except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the commission on aging, except the references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, means the department of social and rehabilitation services.

(4) The council on human resources, administratively created, is abolished, and its functions are transferred to the department.

History: En. 82A-1902 by Sec. 1, Ch. 272, L. 1971.

82A-1903. Additional functions transferred to department. The functions of the state board of education which are contained in Title 41, chap-

ter 8, R. C. M. 1947 (pertaining to vocational rehabilitation and education), except the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, are transferred to the department. Unless inconsistent with this act, any reference in Title 41, chapter 8, R. C. M. 1947, to the state board of education, except the references relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals in section 82A-1907 of this chapter, means the department of social and rehabilitation services.

History: En. 82A-1903 by Sec. 1, Ch. 272, L. 1971.

82A-1904. County departments of public welfare—continued—supervision. The county departments of public welfare, including the county boards of public welfare, created in Title 71, chapter 2, R. C. M. 1947, are continued, and are under the supervision of the department.

History: En. 82A-1904 by Sec. 1, Ch. 272, L. 1971.

82A-1905. Veterans' welfare commission—continued—renamed board of veterans' affairs—transfer. (1) The veterans' welfare commission of the state of Montana, created in Title 77, chapter 10, R. C. M. 1947, and its functions are continued, and the commission is renamed the board of veterans' affairs. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the veterans' welfare commission of the state of Montana means the board of veterans' affairs.

(2) The board is transferred to the department for administrative purposes only as prescribed in section 82A-108 of this act. However, the board may hire its own personnel, and section 82A-108(2)(d) of this act does not apply.

(3) Members of the board before the effective date of this chapter serve for the remainder of their terms. The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed in section 70-1001 [77-1001], R. C. M. 1947. Members shall be compensated and reimbursed as are members of advisory councils under section 82A-110 of this act.

History: En. 82A-1905 by Sec. 1, Ch. 272, L. 1971.

82A-1906. Board of social and rehabilitation appeals—creation—allocation—composition—functions—designation. (1) There is created a board of social and rehabilitation appeals.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108 of this act.

(3) The board consists of three (3) members, appointed by the governor as prescribed in section 82A-112 of this act, as follows:

(a) The director of the department, who shall act as chairman of the board. The director does not have a term on the board as a board member, but shall serve at the pleasure of the governor.

(b) Two members of the general public.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112 of this act. For purposes of that section, a majority shall be considered as one (1).

History: En. 82A-1906 by Sec. 1, Ch. 272, L. 1971.

82A-1907. Functions transferred to board of social and rehabilitation appeals. (1) The quasi-judicial functions of the state department of public welfare, including the state board of public welfare, which are contained in Title 71, chapters 2 through 7, 12, 14, and 15, R. C. M. 1947 (pertaining to public welfare), are transferred to the board of social and rehabilitation appeals. Unless inconsistent with this act, any reference in Title 71, chapters 2 through 7, 12, 14, and 15, R. C. M. 1947, to the state department of public welfare or to the state board of public welfare relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals means the board of social and rehabilitation appeals.

(2) The quasi-judicial functions of the state board of education, which are contained in Title 41, chapter 8, R. C. M. 1947 (pertaining to vocational rehabilitation and education), are transferred to the board of social and rehabilitation appeals. Unless inconsistent with this act, any reference in Title 41, chapter 8, R. C. M. 1947, to the state board of education relating to the quasi-judicial functions transferred to the board of social and rehabilitation appeals means the board of social and rehabilitation appeals.

(3) The quasi-judicial functions of the commission on aging, which are contained in the "State Plan for Aging" submitted to and approved by the administration on aging of the division of social and rehabilitative services of the United States department of health, education and welfare in 1965, are transferred to the board of social and rehabilitation appeals.

History: En. 82A-1907 by Sec. 1, Ch. 272, L. 1971.

82A-1908. Additional agencies abolished. The following agencies are abolished:

(1) The day care advisory council, provided for in section 10-803, R. C. M. 1947.

(2) The personnel committee of the department of public welfare, administratively created.

(3) The educational leave committee of the department of public welfare, administratively created.

(4) The advisory committee on children and youth of the council on human resources, administratively created.

(5) The medical assistance advisory council, provided for in section 71-1513, R. C. M. 1947.

History: En. 82A-1908 by Sec. 1, Ch. 272, L. 1971.

CHAPTER 20—DEPARTMENT OF FISH AND GAME

Section
82A-2001. Department of fish and game—creation—head.
82A-2001.1. Functions of department.
82A-2003. Director of fish and game department.
82A-2004. State fish and game commission—composition—qualifications—designation.
82A-2005. Montana outfitters' council—composition—qualifications—terms—allocation—passenger tramway safety.

82A-2001. Department of fish and game—creation—head. There is created a department of fish and game. The department head is the state fish and game commission provided for in section 82A-2004 of this chapter, but section 82A-107 of this act does not apply to the commission as a department head.

History: En. 82A-2001 by Sec. 1, Ch. 272, L. 1971.

Executive Implementation

This chapter was implemented by Executive Reorganization Order 1-72, dated June 30, 1972, effective July 1, 1972.

82A-2001.1. Functions of department. The department and its units are responsible for administering laws pertaining to fish and game, including, but not limited to:

(1) Fish, game, and outfitters (Title 26);

(2) State parks (Title 62, chapter 3);

(3) Outdoor recreational resources (Title 62, chapter 4);

(4) Motorboat and vessel regulations (Title 69, chapter 35).

History: En. 82A-2001.1 by Sec. 54, Ch. 511, L. 1973.

82A-2002. Repealed.

Repeal

Section 82A-2002 (Sec. 1, Ch. 272, L. 1971), relating to functions of the department, was repealed by Sec. 58, Ch. 511, Laws 1973.

82A-2003. Director of fish and game department. (1) There is a director of fish and game who shall be appointed by the governor in the manner set forth in section 82A-106, except that the director shall serve a term concurrent with the governor's term, and the director may be removed from office by the governor only for neglect of duty, incompetency, or other good cause, and after a full hearing on verified charges. The charges shall be filed, and a copy served on the director, at least twenty (20) days before the hearing.

(2) The director shall have experience, special training, and skill in wildlife protection, conservation and management.

(3) The director is not a department head for purposes of section 82A-107.

History: En. 82A-2003 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 55, Ch. 511, L. 1973.

Amendments

The 1973 amendment designated the former entire section as subsection (1); deleted from the beginning of the section two sentences continuing the office of director; added subsections (2) and (3); and made minor changes in style and phraseology.

82A-2004. State fish and game commission—composition—qualifications—designation. (1) There is a state fish and game commission.

(2) The commission consists of five (5) members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one (1) member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occurring on the commission shall be filled by the governor with the consent of the senate in the same manner and from the district in which the vacancy occurs.

(5) The state fish and game commission is designated as a quasi-judicial board for purposes of section 82A-112 of this act.

History: En. 82A-2004 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 56, Ch. 511, L. 1973.

Amendments

The 1973 amendment substituted the present subsection (1) for a subsection continuing the state fish and game commission created in Title 26, chapter 1, except for the function of appointing and removing the state fish and game director; inserted new subsections (2) through (4); and renumbered former subsection (2) as (5).

82A-2005. Montana outfitters' council — composition — qualifications — terms—allocation—passenger tramway safety. (1) There is a Montana outfitters' council.

(2) The council consists of seven (7) members. Each member shall be a licensed outfitter and shall represent one (1) of the seven (7) fish and game administrative districts. A member shall be selected by the licensed outfitters residing in that district by election at an annual meeting of the outfitters to be held in the district headquarters at 1:00 p.m. on the second Friday of March. A majority vote of all the outfitters in attendance at the meeting shall determine the member from the district. At the election an alternate member shall also be elected to serve if the first elected member is unable to act.

(3) The members shall serve staggered three (3) year terms and take office on the day they are elected.

(4) The council is allocated to the department.

(5) The council is not subject to the provisions of section 82A-110.

(a) Wherever the words "Montana aerial tramway safety board," "passenger tramway safety board," or "board" appear in sections 69-6601, 69-6605, 69-6606, 69-6607, 69-6608, 69-6609, 69-6610, 69-6611, 69-6612, 69-6613, 69-6614, the word "department" is substituted therefor.

History: En. 82A-2005 by Sec. 57, Ch. 511, L. 1973.

Repealing Clause

Section 58 of Ch. 511, Law 1973 read "Sections 26-101, 26-102, 26-104.2, 26-105, 26-105.1, 26-106.1, 26-106.2, 26-116, 26-120, 26-209, 26-224, 26-905, 26-910, 62-309, 62-404, 69-6603, 69-6604, 82A-217, 82A-2002, R. C. M. 1947, are repealed."

CHAPTER 21—MISCELLANEOUS TRANSFERS

Section
82A-2101. Federal-state co-ordinator transferred to governor's office.
82A-2102. Board of state canvassers transferred to secretary of state.

82A-2101. Federal-state co-ordinator transferred to governor's office. The office of the federal-state co-ordinator, administratively created, is transferred to the office of the governor.

History: En. 82A-2101 by Sec. 1, Ch. 272, L. 1971.

82A-2102. Board of state canvassers transferred to secretary of state. The board of state canvassers, created in section 23-4016, R. C. M. 1947, is transferred to the office of the secretary of state.

History: En. 82A-2102 by Sec. 1, Ch. 272, L. 1971.

Repealing Clause

Section 2 of Ch. 272, Laws 1971 read "Section 27-427, R. C. M. 1947, is repealed."

82A-2103. Repealed.

Repeal

Section 82A-2103 (Sec. 1, Ch. 272, L. 1971), relating to the state board of hail insurance, was repealed by Sec. 2, Ch. 395, Laws 1973. For present law, see sec. 82A-304.1.

TITLE 83—STATE SOVEREIGNTY AND JURISDICTION

Chapter
1. Sovereignty and territorial jurisdiction of the state, 83-114.
7. Tort actions against state, 83-701, 83-706.1.
9. Assignment of claims against state, 83-901 to 83-904.

CHAPTER 1—SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

Section
83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center.

83-105. Repealed.

Repeal

Section 83-105 (Sec. 1, Ch. 1, L. 1939), relating to the conveyance of mineral rights in Glacier National Park, was repealed by Sec. 116, Ch. 428, Laws 1973.

83-108. (25) Jurisdiction over lands purchased by United States.

References

State ex rel. Parker v. District Court, 147 M 151, 410 P 2d 459.

83-114. Acceptance of concurrent jurisdiction over Veterans Administration Center. The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana as ceded by Public Law 91-45; 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana.

History: En. Sec. 1, Ch. 157, L. 1971.

Title of Act

An act accepting the cession of concurrent jurisdiction with the United States over the real property comprising the Veterans Administration Center, Fort Harrison, Montana; and providing an effective date.

Effective Date

Section 2 of Ch. 157, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 1, 1971.

CHAPTER 7—TORT ACTIONS AGAINST STATE

Section
83-701. Jurisdiction of district courts.
83-706.1. Governmental immunity abolished.

83-701. Jurisdiction of district courts. The district courts of the state of Montana shall have exclusive jurisdiction on any claim against the state of Montana for injury to person or property, accruing on or after July 2, 1973, on account of damage to or loss of property, or on account of personal injuries or death caused by the negligence or wrongful act or omission of any employee of the state of Montana, while acting within the scope of his office or employment, under circumstances where the state of Montana, if a

private person, would be liable to the claimant for such damage, loss, injury or death, in accordance with the law of the state of Montana.

History: En. Sec. 1, Ch. 254, L. 1959; amd. Sec. 1, Ch. 93, L. 1973.

Amendments

The 1973 amendment deleted "to hear, determine, and render judgment to the extent of the insurance coverage carried by the state of Montana" after "exclusive jurisdiction"; substituted "for injury to person or property, accruing on or after July 2, 1973" for "for money only, accruing on or after the passage and approval of this act"; and deleted two sentences reading: "The state of Montana shall be liable in respect of such claims to the said claimant in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana shall not be liable for interest prior to judgment, nor for punitive damages. Costs shall be allowed in all courts to the successful complainant, to the same extent if the state of Montana were a private litigant, except that such costs shall not include attorneys' fees."

DECISIONS UNDER FORMER LAW

Sovereign Immunity

Limitations of the doctrine of sovereign immunity (40-4401 et seq., 75-5939 et seq., and 83-701 et seq.) are binding upon the supreme court so that state is not liable in excess of collectible insurance. Kaldahl v. State Highway Commission, — M —, 490 P 2d 220.

State highway commission and state of Montana are immune from suit for plaintiffs' injuries and property damage to their automobile despite allegations that the highway department had not kept the highway in proper and reasonable repair, or erected appropriate warning signs where there was a dangerous and unsafe section containing "chuck" holes, one of which caused plaintiffs' automobile to jolt out of control, overturn, and injure plaintiffs. Kaldahl v. State Highway Commission, — M —, 490 P 2d 220.

83-706. Repealed.

Repeal

Section 83-706 (Sec. 6, Ch. 254, L. 1959), creating state immunity from liability in excess of insurance coverage, was repealed by Sec. 3, Ch. 93, Laws 1973.

83-706.1. Governmental immunity abolished. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to claims for relief and causes of action arising after July 1, 1973. The state, through the department of administration, has the right to provide for self insurance for claims for injury to a person or property. The state, counties, cities, towns, and all other local governmental entities have the right also, but not the duty, to purchase insurance to protect against claims for injury to a person or property.

History: En. 83-706.1 by Sec. 2, Ch. 93, L. 1973.

Title of Act

An act to implement article II, section 18, concerning sovereign immunity by providing availability of insurance coverage for governmental entities; amending section 87-701 [83-701], R. C. M. 1947; repealing section 83-706, R. C. M. 1947; and providing for an effective date.

Repealing Clause

Section 3 of Ch. 93, Laws 1973 read "Section 83-706, R. C. M. 1947, is repealed."

Effective Date

Section 4 of Ch. 93, Laws 1973 read "Section 1 and Section 3 of this act are effective on July 1, 1973, Section 2 is effective on passage."

CHAPTER 8—JURISDICTION OF INDIAN COUNTRY

83-801. Criminal jurisdiction, etc.

Effect of Chapter

This section constitutes valid and binding consent of people of Montana pursuant to federal statute to assume jurisdiction over crimes committed by or against Indians on Indian territory. State

ex rel. McDonald v. District Court, — M —, 496 P 2d 78.

Legislative Action Sufficient to Establish Jurisdiction

Federal statute providing for state jurisdiction over offenses committed by or against Indians on Indian reservations did not require constitutional amendment for valid and binding consent of people of Montana to assume jurisdiction; where Congress retained power to reassume federal jurisdiction through repeal of same statute state legislative action was sufficient to establish jurisdiction. State ex rel. McDonald v. District Court, — M —, 496 P 2d 78.

Scope of Chapter

The Northern Cheyenne reservation was not within the scope of this chapter, and in the absence of action by the state and the tribe in strict compliance with congressional requirements for transfer of jurisdiction, the tribal council could not waive to the district court jurisdiction of juvenile delinquency on the reservation. Blackwolf v. District Court, — M —, 493 P 2d 1293.

Tribal Council Action

Failure of state legislature to take affirmative legislative action concerning either civil or criminal jurisdiction over Indians on Blackfeet reservation as permitted under 28 U. S. C. § 1360 was not remedied by unilateral tribal council action, which provided that tribal and state courts have concurrent jurisdiction in all civil suits against members of Blackfeet tribe. Kennerly v. District Court of the Ninth Judicial District of Montana, 400 US 423, 27 L Ed 2d 507, 91 S Ct 480.

83-806. Withdrawal of consent to state jurisdiction.

Withdrawal of Consent

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation was ineffective where it was enacted more than two years after state assumed jurisdiction; governor had no power to extend time limit for withdrawal of tribal consent. State ex rel. McDonald v. District Court, — M —, 496 P 2d 78.

Tribal resolution attempting to withdraw consent to state jurisdiction over criminal offenses committed on Indian reservation did not constitute a valid withdrawal of such consent where resolution was never transmitted to governor and no gubernatorial proclamation was ever issued concerning the tribal resolution. State ex rel. McDonald v. District Court, — M —, 496 P 2d 78.

CHAPTER 9—ASSIGNMENT OF CLAIMS AGAINST STATE

Section
83-901. Notice to state auditor.
83-902. Limitations on assignment.
83-903. Power of state auditor to promulgate rules.
83-904. Effect of assignment.

83-901. Notice to state auditor. All transfers and assignments made of any claim against the state of Montana, or any part thereof, or interest thereon, except as hereinafter provided, shall be absolutely null and void and unenforceable against the state of Montana unless the assignee thereof files written notice of the assignment on such forms as may be required by the state auditor, together with a true copy of the instrument of assignment.

History: En. Sec. 1, Ch. 44, L. 1967.

Title of Act

An act to require assignees of moneys due from the state of Montana to file written notice of assignment and a copy of the assignment instrument with the state auditor; restricting multiple assignments; authorizing promulgation of rules and regulations for such assignments by the state auditor; and allowing deductions to be made from salaries of employees of the state for specified purposes.

83-902. Limitations on assignment. Unless otherwise expressly permitted by the state auditor, no more than one assignment of a claim shall be effective at one time, and no assignment shall be made to more than

one party, except that an assignment may be made to one party as agent or trustee for two (2) or more parties. An assignment shall not be subject to further assignment.

History: En. Sec. 2, Ch. 44, L. 1967.

83-903. Power of state auditor to promulgate rules. The state auditor may promulgate rules and regulations regarding the form of assignment, the procedures for filing assignments, and the submission of claims covering assigned funds.

History: En. Sec. 3, Ch. 44, L. 1967.

83-904. Effect of assignment. Nothing contained herein shall in any way impair the negotiability of state warrants, nor preclude employees of the state of Montana from authorizing deductions from salaries for employees group insurance programs authorized by law, union dues, or purchase of U.S. government savings bonds.

History: En. Sec. 4, Ch. 44, L. 1967.

REVISED CODES OF MONTANA

VOLUME 5
Part 2
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 5 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 5 (PART 2) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by
A. WAYNE GUERNSEY, A.B., J.D.
and
THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor
WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1967, 1969, 1971 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

Copyright © 1973 by
THE ALLEN SMITH COMPANY
Indianapolis, Indiana

NEW LAWS IN VOLUME 5 (Part 2)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1967

Banks with offices in more than one county, assessment, 84-4606.
Corporate tax liens, release, 84-1505.1.
Extraordinary levies, 84-4701.6.
Jeopardy assessments, income tax, 84-4928.1.
Mobile homes, registration when out-of-state, 84-6606, 84-6607.
Public contractors, withholding tax from payments, 84-3513 to 84-3516.
University support, increase of tax levy, 84-3804.

ENACTED IN 1969

Cigarette tax, 84-5606.2 to 84-5606.31.
Income tax surtax, 84-4902.1.
License taxes,
    Corporations, 84-1501.5, 84-1505.2.
    Gasoline, 84-1845 to 84-1847, 84-1849 to 84-1861.
    Special fuel, 84-1832.1.
Multistate Tax Compact, 84-6701 to 84-6704.
Privilege tax on possession or use of tax-exempt property, 84-207 to 84-210.
Tobacco tax (cigarettes excluded), 84-6801 to 84-6807.

ENACTED IN 1971

Aviation gasoline, unlawful use, 84-1855.1.
Banks subject to corporation license tax, 84-1501.6, 84-1501.7.
Corporation income tax, 84-6901 to 84-6908.

ENACTED IN 1973

Agricultural land, valuation for tax purposes, 84-437.1 to 84-437.14.
Appeal of assessments to state tax appeal board, 84-802.1, 84-903.1.
Assessment book, form, 84-502.1.
Coal mines license tax proceeds, disposition, 84-1309.1.
Corporations, identification and listing for tax purposes, 84-708.2 to 84-708.8.
Department of revenue functions, 84-708.1.
Grade crossing protection, allocation of funds for, 84-1840.1.
Judicial review of state tax appeal board decisions, 84-709.1.
Resource indemnity trust account, 84-7001 to 84-7013.
Sewer charges of municipalities, assessment and collection, 84-4726.1.

AMENDMENTS IN VOLUME 5 (Part 2)

Airline flight property tax, 84-6401 to 84-6408, 84-6410.
Assessment book, records, maps and list, 84-501, 84-504 to 84-507, 84-509 to 84-511.
Assessment of property for taxation, 84-401 to 84-406, 84-409 to 84-415, 84-427 to 84-429, 84-429.7 to 84-429.9, 84-429.11, 84-429.12, 84-439 to 84-441, 84-448 to 84-452.
    Department of revenue, assessments made by, 84-719 to 8-723.
Bank shares, moneys and credits, taxation, 84-4604 to 84-4606.
Canals, ditches and flumes, assessment, 84-901 to 84-907.
Cement and gypsum producers' license tax, 84-1202, 84-1204 to 84-1207, 84-1209.
Cement dealers' license tax, 84-1103, 84-1105, 84-1106, 84-1108.
Cigarette tax, 84-5606, 84-5606.2 to 84-5606.4, 84-5606.6, 84-5606.8, 84-5606.9, 84-5606.13 to 84-5606.17, 84-5606.20 to 84-5606.31.
Classification of property and basis for imposition of tax, 84-301, 84-302, 84-307, 84-308.
Coal mines license tax, 84-1302 to 84-1306, 84-1308.

Coal retailers' license tax, 84-1403, 84-1405, 84-1406, 84-1408, 84-1412.
Collection of property taxes, 84-4116, 84-4130, 84-4191, 84-4201, 84-4202, 84-4211.
Computation and extension of property tax, 84-4001 to 84-4006, 84-4013.
Corporation income tax, 84-6902, 84-6903, 84-6907.
Corporation license tax, 84-1501, 84-1501.2, 84-1502 to 84-1505.2, 84-1507 to 84-1508.2, 84-1509, 84-1512, 84-1514 to 84-1518.
County tax appeal board, 84-601.
Definition of terms, 84-101.
Department of revenue,
    Hearings and investigations by department, 84-714 to 84-716.
    Records and certificates, 84-724, 84-732 to 84-734.
Deposit and distribution of proceeds of state taxes, 84-1901.
Electrical energy producers' license tax, 84-1601 to 84-1606, 84-1608.
Electric power and transmission lines, assessment, 84-901 to 84-907.
Equalization of taxes, 84-602 to 84-610, 84-710 to 84-712.
    Appeal of changes by department, 84-4503.
Exemptions from property tax, 84-202.
Express company license tax, 84-1702 to 84-1707.
Federal payments in lieu of taxes, 84-5501, 84-5502.
Fines and forfeitures for tax violations, disposition, 84-515.
Freight line company gross earnings tax, 84-4818 to 84-4826.
Gasoline distributors' license tax, 84-1846, 84-1847, 84-1849 to 84-1855, 84-1857, 84-1858, 84-1861.
Gasoline importers' tax, 84-6301, 84-6306, 84-6307.
House trailer property tax, 84-6601, 84-6604 to 84-6607.
Income tax, 84-4901 to 84-4902.1, 84-4903 to 84-4903.2, 84-4903.5 to 84-4903.13, 84-4905, 84-4907, 84-4907.1, 84-4908, 84-4913, 84-4914, 84-4919 to 84-4920.1, 84-4921, 84-4922, 84-4923.1, 84-4924, 84-4928, 84-4928.1, 84-4929 to 84-4931, 84-4937 to 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958.
Initiative No. 54, 84-5606.
Interstate fleets, taxation, 84-727 to 84-730.
Metalliferous mines license tax, 84-2003 to 84-2006, 84-2008 to 84-2013, 84-2016.
Micaceous mineral mine license tax, 84-5902 to 84-5907.
Migratory livestock tax, 84-5202, 84-5203, 84-5205, 84-5206, 84-5210, 84-5214, 84-6008, 84-6012 to 84-6014.
Mines, net proceeds tax, 84-5402, 84-5403, 84-5405 to 84-5410, 84-5412, 84-5415.
Multistate Tax Compact ratification, 84-6701 to 84-6703.
Municipal tax levies, 84-4701 to 84-4701.3, 84-4701.5, 84-4701.6, 84-4713, 84-4715 to 84-4721.
Natural gas distributors' license tax, 84-2102, 84-2104 to 84-2106, 84-2108.
Oil or gas well net proceeds tax, 84-6202 to 84-6209, 84-6211 to 84-6213.
Oil producers' license tax, 84-2202 to 84-2207, 84-2209.
Pipelines, assessment, 84-901 to 84-907.
Production credit association tax, 84-5801.
Protest payment of taxes and action for recovery, 84-4502.
Public contractors' license tax, 84-3501, 84-3503, 84-3505, 84-3507, 84-3508, 84-3510, 84-3513, 84-3515, 84-3516.
Railroads, assessment, 84-801 to 84-804.
Sleeping car company license tax, 84-2301 to 84-2309.
Special fuel tax, 84-1831 to 84-1832.1, 84-1833 to 84-1838, 84-1840, 84-1841 to 84-1844.
State tax appeal board, 84-701 to 84-706, 84-708, 84-709, 84-717.
State tax levy on property, 84-713, 84-3803, 84-3804, 84-3806, 84-3808.
Store license tax, 84-2401 to 84-2405, 84-2407, 84-2410, 84-2412.
Suspense account and tax refunds, 84-725, 84-726.
Telegraph and telephone lines, assessment, 84-901 to 84-907.
Telegraph company license tax, 84-2502, 84-2503, 84-2505, 84-2507, 84-2508.
Telephone company license tax, 84-2601 to 84-2603, 84-2605, 84-2607, 84-2608.
Tobacco tax, 84-6801, 84-6806, 84-6807.

MONTANA REVISED CODES

TITLE 84—TAXATION

Chapter

1. Definition of terms, 84-101.
2. Property subject to taxation—basis for taxation, 84-202, 84-207 to 84-210.
3. Classification of property for taxation—basis for taxation, 84-301, 84-302, 84-307, 84-308.
4. Assessment of property—powers, duties and liability of county assessor, 84-401 to 84-406, 84-409 to 84-415, 84-427 to 84-429, 84-429.7 to 84-429.9, 84-429.11, 84-429.12, 84-437.1 to 84-437.14, 84-439 to 84-441, 84-448 to 84-452.
5. Assessment book—form—contents—disposal, 84-501, 84-502.1, 84-504 to 84-507, 84-509 to 84-511, 84-515.
6. Equalization of taxes and county tax appeal board, 84-601 to 84-610.
7. State department of revenue and tax appeal board, 84-701 to 84-706, 84-708 to 84-708.8, 84-709, 84-709.1, 84-710 to 84-717, 84-719 to 84-730, 84-732 to 84-734.
8. Railroads operating in more than one county—assessment franchise, etc. by state department of revenue, 84-801, 84-802, 84-802.1, 84-803, 84-804.
9. Telegraph, telephone, electric power and other lines—assessment by state department of revenue, 84-901 to 84-903.1, 84-904 to 84-907.
10. License taxes—carbon black producers, Repealed—Section 1, Chapter 370, Laws of 1973.
11. License taxes—cement dealers, 84-1103, 84-1105, 84-1106, 84-1108.
12. License taxes—cement and gypsum producers, 84-1202, 84-1204 to 84-1207, 84-1209.
13. License taxes—coal mines, 84-1302 to 84-1306, 84-1308, 84-1309.1.
14. License taxes—coal retailers, 84-1403, 84-1405, 84-1406, 84-1408, 84-1412.
15. License taxes—corporation license tax, 84-1501, 84-1501.2, 84-1501.5 to 84-1501.7, 84-1502 to 84-1505.2, 84-1507 to 84-1508.2, 84-1509, 84-1512, 84-1514 to 84-1518.
16. License taxes—electrical energy producers, 84-1601 to 84-1606, 84-1608.
17. License taxes—express companies, 84-1702 to 84-1707.
18. License taxes—gasoline dealers and distributors—special fuel tax, 84-1831 to 84-1832.1, 84-1833 to 84-1838, 84-1840, 84-1840.1, 84-1841 to 84-1847, 84-1849 to 84-1855.1, 84-1856 to 84-1861.
19. License and other tax proceeds—how disposed of, 84-1901.
20. License taxes—metalliferous mines, 84-2003 to 84-2006, 84-2008 to 84-2013, 84-2016.
21. License taxes—natural gas distributors, 84-2102, 84-2104 to 84-2106, 84-2108.
22. License taxes—oil producers, 84-2202 to 84-2207, 84-2209.
23. License taxes—sleeping car companies, 84-2301 to 84-2309.
24. License taxes—store license, 84-2401 to 84-2405, 84-2407, 84-2410, 84-2412.
25. License taxes—telegraph companies, 84-2502, 84-2503, 84-2505, 84-2507, 84-2508.
26. License taxes— telephone companies, 84-2601 to 84-2603, 84-2605, 84-2607, 84-2608.
35. Licenses—public contractors, 84-3501, 84-3503, 84-3505, 84-3507, 84-3508, 84-3510, 84-3513 to 84-3516.
38. Levy of taxes, 84-3803, 84-3804, 84-3806, 84-3808.
39. Uniform Federal Tax Lien Registration Act, Repealed—Section 8, Chapter 228, Laws of 1967.
40. Computation and entry of taxes, 84-4001 to 84-4006, 84-4013.
41. Collection of general property taxes—tax sales—redemption—tax deeds—sale of tax deed lands, 84-4130, 84-4191.
42. Collection of personal property taxes not a lien on real estate—road and poor taxes, 84-4201, 84-4202, 84-4211.
45. Protest payment of taxes—action to recover, 84-4502, 84-4503.
46. Banks—taxation, 84-4604 to 84-4606.
47. Cities and towns—taxation and license, 84-4701 to 84-4701.3, 84-4701.5, 84-4701.6, 84-4713, 84-4715 to 84-4721, 84-4726.1.
48. Freight line companies—taxation, 84-4818 to 84-4826.
49. Income tax, 84-4901 to 84-4902.1, 84-4903 to 84-4903.2, 84-4903.5 to 84-4903.13, 84-4905, 84-4907, 84-4907.1, 84-4908, 84-4913, 84-4914, 84-4919 to 84-4920.1, 84-4921, 84-4922, 84-4923.1, 84-4924, 84-4928, 84-4928.1, 84-4929 to 84-4931, 84-4937 to 84-4940, 84-4942, 84-4943, 84-4946, 84-4948, 84-4950, 84-4951, 84-4955, 84-4956, 84-4958.

52. Livestock taxation, 84-5202, 84-5203, 84-5205, 84-5206, 84-5210, 84-5214.
54. Mines taxation—general property and net proceeds tax, 84-5402, 84-5403, 84-5405 to 84-5410, 84-5412, 84-5415.
55. Lieu taxes on resettlement projects—requests for United States payment of, 84-5501, 84-5502.
56. Cigarette tax—licenses—stamps, 84-5606, 84-5606.2 to 84-5606.31.
58. Production credit associations—taxation, 84-5801.
59. Micaceous mineral mines—license taxes, 84-5902 to 84-5907.
60. Migratory personal property—taxation, 84-6008, 84-6012 to 84-6014.
62. Mines or wells producing natural gas or petroleum—net proceeds tax, 84-6202 to 84-6209, 84-6211 to 84-6213.
63. Importers tax on gasoline purchased outside state and used in state, 84-6301, 84-6306, 84-6307.
64. Flight property of airline companies—assessment and taxation, 84-6401 to 84-6408, 84-6410.
65. License taxes—racing associations, Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967.
66. Property tax on house trailers, 84-6601, 84-6604 to 84-6607.
67. Multistate tax compact, 84-6701 to 84-6704.
68. Tobacco tax (cigarettes excluded), 84-6801 to 84-6807.
69. Corporation income tax, 84-6901 to 84-6908.
70. Resource indemnity trust account, 84-7001 to 84-7013.

CHAPTER 1—DEFINITION OF TERMS

Section
84-101. Definition of terms.

84-101. (1996) **Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First and Second. * * * [Same as parent volume.]

Third—The term "improvements" includes all buildings, structures, mobile homes, fixtures, fences, and improvements, including mobile homes, situated upon, erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth to Sixth. * * * [Same as parent volume.]

Seventh—The term "mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967. Cal. Pol. C. Sec. 3617.

Amendments

The 1967 amendment, in the paragraph beginning "Third," inserted "mobile homes" after "structures"; inserted "including mobile homes, situated upon" after "improvements"; and added the paragraph beginning "Seventh."

CHAPTER 2—PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section
84-202. Exemptions from taxation.
84-207. Privilege tax upon possession and use of tax-exempt property—exceptions.
84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property.
84-209. Assessment—collection and distribution—taxes shall not become a lien against property.
84-210. Failure to pay tax—remedies of county.

84-202. (1998) **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, the term "institutions of purely public charity" as used in this act shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

History: Ap. p. Sec. 2, p. 73, L. 1891; re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, L. 1911; amd. Sec. 1, Ch. 24, L. 1919; re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931; amd. Sec. 1, Ch. 85, L. 1965; amd. Sec. 1, Ch. 266, L. 1973; amd. Sec. 1, Ch. 361, L. 1973. Cal. Pol. C. Secs. 3607 and 3611.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 266 and once by Ch. 361. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 266, Laws of 1973, added the second, third and fourth paragraphs.

Chapter 361, Laws of 1973, inserted "all unprocessed, perishable fruits and vegetables in farm storage and owned by the producer" near the beginning of the first paragraph.

"Educational Purposes"

The term "educational purposes," as used in section 2, article XII of the 1889 constitution and this section, exempting property used exclusively for "educational purposes" from taxation, is not defined in terms of common scholastic institutions of grammar school, high school and university or college. Organizations for the social, intellectual, physical, or religious welfare of the children are exempt equally. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Religious education is exempt as an "educational purpose" and not as "actual religious worship" even though elements of the latter may be present and may serve to strengthen the exemption of all the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

"Exclusive Use" Defined

The words "exclusive use" consistently have been held to mean the primary and inherent use and not the mere secondary or incidental uses of the property. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Exemption of Church Camp

Where church summer camp, containing twenty-two acres of land and twenty-eight improvements, was "exclusively used for educational purposes" within the meaning of this section and section 2, article XII of the 1889 constitution, it was exempt from taxation. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Extent of Exemption

When exempting an institution of charity, sufficient residence and recreation area may also be exempt. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Limits of Public Charity

An institution of purely public charity, which is exempt from taxation under section 2, article XII of the 1889 constitution and this section, may be devoted to bringing people under religious influence, the beneficiaries of the charity may pay a small portion of the cost, and the activity may be limited to a particular class so long as the numbers who may participate remain somewhat indefinite. Flathead Lake Methodist Camp v. Webb, 144 M 565, 399 P 2d 90.

Nonprofit Foundation

Nonprofit foundation operating and maintaining home for aged was entitled to tax exemption under statute granting exemption to institutions of purely public charity, notwithstanding evidence that foundation charged fees and imposed admission requirements. Bozeman Deaconess Foundation v. Ford, 151 M 143, 439 P 2d 915, 37 ALR 3d 558.

84-207. Privilege tax upon possession and use of tax-exempt property —exceptions. From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates.

History: En. Sec. 1, Ch. 370, L. 1969.

Compiler's Notes

This act became effective March 17, 1969.

Title of Act

An act to provide a privilege tax upon possession and use of tax-exempt property; providing exceptions thereto; fixing the rate of such tax and credit against tax;

providing for assessment, collection and distribution of said taxes; providing penalties for failure to pay the tax and preserving constitutional exemption, and providing an effective date.

84-208. Rate of tax same as ad valorem property tax—credit against tax on use of federally owned property. The tax imposed upon such possession or other beneficial use of tax-exempt property shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof; provided that there shall be credited against the tax so imposed upon the beneficial use of property owned by the federal government the amount of payments which are made in lieu of taxes.

History: En. Sec. 2, Ch. 370, L. 1969.

84-209. Assessment—collection and distribution—taxes shall not become a lien against property. The tax imposed hereunder shall be assessed to such possessors or users of the tax-exempt property upon the same forms, and shall be collected and distributed at the same time and in the same manner as taxes assessed to owners, possessors, or other claimants of property which is subject to ad valorem taxation, except that such taxes shall not become a lien against the property, and no such tax-exempt property may be attached, encumbered, sold or otherwise affected for the collection of the tax imposed hereunder.

History: En. Sec. 3, Ch. 370, L. 1969.

84-210. Failure to pay tax—remedies of county. A tax due and unpaid under this act shall constitute a debt due the county for and on behalf of the various taxing units concerned in the tax. If the tax imposed by this act or any portion thereof is not paid at the time the same becomes delinquent the county auditor may issue a warrant in the name of the county directed to the clerk of the district court in his county and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent taxpayer mentioned in the warrant and, in the appropriate columns, the amount of tax, penalties, interest and other costs for which the warrant is issued and the date when such warrant is filed, and thereupon the warrant so docketed shall have the force and effect of a judgment duly rendered by a district court and docketed in the office of the clerk thereof, and the county shall have the same remedies against the possessor user as any other judgment docket.

History: En. Sec. 4, Ch. 370, L. 1969.

84-211. Repealed.

Repeal

Section 84-211 (Sec. 5, Ch. 370, L. 1969), relating to exemptions granted by the 1889 Montana constitution, was repealed by Sec. 58, Ch. 100, Laws 1973, and Sec. 120, Ch. 405, Laws 1973.

CHAPTER 3—CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

Section

84-301. Classification of property for taxation.
84-302. Basis for imposition of taxes.

84-307. Assessment of shares of banks—deductions.
84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301. (1999) **Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (b) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1¼) miles.

Class Three. Livestock, poultry and unprocessed products of both; stocks of merchandise of all sorts, together with furniture and fixtures used therewith, except mobile homes; and all office or hotel furniture and fixtures.

Class Four. (a) All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) * * * [Same as parent volume.]

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this subsection (b) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(c) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(d) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the widow remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R. C. M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in

this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, valued at not more than seventeen thousand five hundred dollars ($17,500), which is owned or under a contract for deed, and which is actually occupied by:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-five (65) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient of retirement benefits whose income from all sources is not more than four thousand dollars ($4,000) for a single person and five thousand two hundred dollars ($5,200) for a married couple per annum. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies such improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, that the value of said property shall not increase during the life of the recipient of retirement benefits or widow or widower covered under this class.

Class Nine. All property not included in the eight (8) preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947; amd. Sec. 1, Ch. 45, L. 1951; amd. Sec. 1, Ch. 178, L. 1951; amd. Sec. 1, Ch. 88, L. 1957; amd. Sec. 1, Ch. 103, L. 1961; amd. Sec. 2, Ch. 239, L. 1961; amd. Sec. 1, Ch. 168, L. 1965; amd. Sec. 1, Ch. 215, L. 1967; amd. Sec. 1, Ch. 294, L. 1967; amd. Sec. 2, Ch. 296, L. 1967; amd. Sec. 1, Ch. 292, L. 1969; amd. Sec. 1, Ch. 305, L. 1969; amd. Sec. 1, Ch. 35, L. 1971; amd. Sec. 1, Ch. 312, L. 1971; amd. Sec. 1, Ch. 317, L. 1971; amd. Sec. 1, Ch. 354, L. 1971; amd. Sec. 2, Ch. 266, L. 1973; amd. Sec. 2, Ch. 361, L. 1973; amd. Sec. 1, Ch. 405, L. 1973; amd. Sec. 1, Ch. 489, L. 1973.

Compiler's Notes

This section was amended four times in 1973, once by Ch. 266, once by Ch. 361, once by Ch. 405 and once by Ch. 489. None of the amendatory acts mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by all amendments.

Amendments

Chapter 215, Laws of 1967 deleted "with none other than his or her spouse, minor or dependent children, or persons not responsible for all or any part of the financial support of the affiant, and that the improvements are not used for income-producing purposes other than such purposes as are normally permitted in or on

such improvements" after "occupies such improvements" in the next to last sentence of subparagraph (4) under Class Eight.

Chapter 294, Laws of 1967, in the subsection beginning "Class Seven" designated the first paragraph as "(a)," and added subdivision (b); in the subsection beginning "Class Eight" deleted "or" before "dependent" in subdivision (2); and made minor changes in style.

Chapter 296, Laws of 1967 in the paragraph beginning "Class Two," inserted "except mobile homes" after "vehicles of all kinds"; in the paragraph beginning "Class Three," inserted "except mobile homes" after "used therewith" and in the paragraph beginning "Class Four," designated the first paragraph as subparagraph (a), and added subparagraph (b).

Chapters 292 and 305, Laws of 1969, in the paragraph beginning "Class Two" added "and except * * * one and one-quarter (1¼) miles"; in the paragraph beginning "Class Eight" substituted "$17,500" for "$15,000" in the introductory paragraph, and in subdivision (4), substituted "whose income from all sources * * * married couple per annum" for "not exceeding one hundred fifty dollars ($150) per month, if single, or two hundred fifty dollars ($250) per month if married" and deleted a proviso which read, "Provided such owner and occupier is not gainfully employed to such an extent as would render him or her ineligible for social security benefits, should he or she be otherwise eligible for such benefits, and does not have income from all sources, excluding retirement benefits as mentioned in (4) hereinabove, in excess of one thousand five hundred dollars ($1,500) per year."

Chapter 35, Laws of 1971, redesignated former subdivision (b) of Class Seven as Class Nine; redesignated former Class Nine as Class Ten; and made minor changes in style.

Chapter 312, Laws of 1971, added "or Class Eight" at the end of subdivision (a) under Class Four; added "and except as such property may be included in Class Eight" at the end of subdivision (b) under Class Four; inserted "trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories" in the preliminary paragraph under Class Eight; inserted "or under a contract for deed" in the preliminary paragraph under Class Eight; deleted "by a widow, with or without minor or dependent children, or" after "actually occupied by" in the preliminary paragraph under Class Eight; inserted "who qualifies under the income limitations of (4)" in each of subdivisions (1), (2) and (3) under Class Eight; increased the income limitations in subdivision (4) under Class Eight from $3,300 to $4,000 for a single person and from $4,500 to $5,200 for a married couple; and made minor changes in phraseology and style.

Chapter 317, Laws of 1971, inserted the two paragraphs constituting subdivision (d) under Class Five, and made minor changes in style.

Chapter 354, Laws of 1971, added to subdivision (b) under Class Five the exception relating to property within the incorporated limits of a city or town, and made minor changes in style.

Chapter 266, Laws of 1973, deleted the provisions relating to freeport merchandise originally enacted as subdivision (b) of Class Seven by Ch. 294, Laws 1967, and redesignated as Class Nine by Ch. 35, Laws 1971; and redesignated as Class Nine the provision appearing in the parent volume as Class Nine but redesignated Class Ten by Ch. 35, Laws 1971.

Chapter 361, Laws of 1973, inserted "except all perishable fruits and vegetables and farm storage and owned by the producer" in subdivision (c) of Class Five.

Chapter 405, Laws of 1973, substituted references to the state department of revenue for references to the county assessor and the state board of equalization.

Chapter 489, Laws of 1973, inserted "or received by mesne conveyance (exclusive of leasehold interest), devise or succession" in the middle of Class One; and inserted "or remains in" following "the surface title to which has passed to" in the middle of Class One.

Repealing Clause

Section 2 of Ch. 292, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 215, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 3 of Ch. 292, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 10, 1969.

Section 2 of Ch. 312, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

New Industry

Classification of new business established for production of eggs on mass scale as "commercial" rather than "new industry property" under Class Seven was improper since use of agricultural products in industry does not eliminate that industry

from benefits of Class Seven. Cherry Lane Farms of Montana, Inc. v. Carter, 153 M 240, 456 P 2d 296.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

DECISIONS UNDER FORMER LAW

Reserved Right of Entry

Reserved right of entry for purpose of exploring and developing a mineral right can be taxed as an independent entity of value; a conveyed right cannot be so taxed; a reserved right is a taxable entity distinct from the mineral interest which is taxable only on production, whereas a conveyed right is appurtenant to the mineral right with no independent taxable status. Cranston v. Musselshell County, 156 M 288, 483 P 2d 289.

84-302. (2000) **Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Classes 1. to 7. * * * [Same as parent volume.]

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921; amd. Sec. 3, Ch. 239, L. 1961; amd. Sec. 2, Ch. 168, L. 1965; amd. Sec. 2, Ch. 305, L. 1969; amd. Sec. 2, Ch. 35, L. 1971; amd. Sec. 2, Ch. 317, L. 1971; amd. Sec. 3, Ch. 266, L. 1973.

Amendments

The 1969 amendment substituted "fifteen per cent (15%)" for "twenty per cent (20%)" in Class 8.

Chapter 35, Laws of 1971, inserted a Class 9 with 1% rate corresponding to the Class Nine inserted in sec. 84-301 by the same act; and redesignated Class 9 as Class 10.

Chapter 317, Laws of 1971, made no change in this section.

The 1973 amendment deleted the Class 9 inserted by Ch. 35, Laws 1971; and redesignated former Class 10 as Class 9.

Repealing Clause

Section 3 of Ch. 305, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 35, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 305, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 11, 1969.

Section 4 of Ch. 35, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

References

State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

84-306. (2000.4) **Repealed.**

Repeal

Section 84-306 (Sec. 4, Ch. 64, L. 1929; Sec. 1, Ch. 34, L. 1939), relating to valuation of shares of stock of national banks, was repealed by Sec. 1, Ch. 25, Laws 1971.

84-307. (2000.5) **Assessment of shares of banks—deductions.** The shares of all banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the book value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank.

History: En. Sec. 5, Ch. 64, L. 1929; amd. Sec. 2, Ch. 25, L. 1971.

Amendments

The 1971 amendment deleted "state" before "banking corporations"; and inserted "book" before "value of the real estate."

Repealing Clause

Section 1 of Ch. 25, Laws 1971 read

"Section 84-306, R. C. M. 1947, is repealed."

Effective Date

Section 3 of Ch. 25, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

84-308. (2000.6) **Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.** As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value on that portion of the true and full value not represented by surplus, as shown on the books of the bank; seven per centum (7%) on that portion of the true and full value represented by surplus as shown on the books of the bank; provided that on that portion of any of such surplus which is over and above the amount represented by the stated capital of a bank, the excess shall be subject to thirty per centum (30%) of true and full value. The state department of revenue shall prepare, distribute and cause to be used such forms as it may require to obtain from the banks doing business in this state reports of such facts and figures as may be necessary to ascertain the taxable value of bank shares as a basis for the imposition of taxes.

History: En. Sec. 6, Ch. 64, L. 1929; amd. Sec. 1, Ch. 172, L. 1957; amd. Sec. 1, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence of the third paragraph.

CHAPTER 4—ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

Section
84-401. Property assessed at cash value—exception for agricultural lands.
84-402. Department of revenue to determine and show percentage basis and taxable value computed thereon and county assessor to be agents of the state department of revenue.
84-403. Appeal for taxpayer aggrieved at percentage assignment.
84-404. State department of revenue to assign percentage basis, when.
84-405. Assessor's blanks and rolls to be provided by state department of revenue.
84-406. Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.
84-409. Statement—what to contain.
84-410. Department of revenue to furnish blanks, etc.
84-411. Statement to be filled out and returned to agent of the department of revenue.
84-412. General powers of department of revenue.
84-413. Method of making assessment upon refusal of statement.
84-414. Assessment of unknown or absent owners.
84-415. Assessment of unknown or absent owners—in whose name property to be assessed.
84-427. Assessment of railroads, telegraph, telephone and electric light lines.
84-428. Railroads—how assessed.
84-429. Land—how assessed.
84-429.7. Classification and appraisal—duties of the department of revenue.
84-429.8. Property tax administration fund—tax levy for.
84-429.9. Assessments to be made on classification and appraisal.
84-429.11. Notice of classification and appraisal to owners—appeals.
84-429.12. Classification and appraisal—general and uniform methods.
84-437.1. Legislative intent as to agricultural property.
84-437.2. Eligibility of land for valuation as agricultural.
84-437.3. Agricultural uses only considered in valuation.

84-437.4. Roll-back tax—computation.
84-437.5. Roll-back tax procedures governed by nonagricultural provisions.
84-437.6. Improvements on agricultural land.
84-437.7. Application for valuation as agricultural land.
84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use.
84-437.9. Roll-back tax on change of use of part of tract.
84-437.10. Agricultural land taken under eminent domain.
84-437.11. Tract crossing county line considered as whole.
84-437.12. Factual details as to agricultural land to be shown on tax list.
84-437.13. Rules—regulations—forms.
84-437.14. Violation as misdemeanor.
84-439. Property concealed, misrepresented, etc.
84-440. Property having escaped assessment.
84-441. Supplemental assessment.
84-448. Annual settlements.
84-449. Department of revenue to collect farm statistics.
84-450. Delivery to commissioner of agriculture.
84-451. Statistics, how obtained.
84-452. Penalty for refusal to furnish statistics.

84-401. (2001) **Property assessed at cash value—exception for agricultural lands.** All taxable property must be assessed at its full cash value except the assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes and shall be so valued unless a different use is demonstrated. Land and the improvements thereon must be separately assessed.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R. C. M. 1921; amd. Sec. 2, Ch. 512, L. 1973. Cal. Pol. C. Sec. 3627.

Amendments

The 1973 amendment inserted the exception relating to agricultural lands at the end of the first sentence.

84-402. (2001.1) **Department of revenue to determine and show percentage basis and taxable value computed thereon and county assessor to be agents of the state department of revenue.** (1) The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state department of revenue or its agents, and the taxable value thereupon computed when they make their annual assessments, and copies of such assessments as provided for in section 84-411 shall show the taxpayer the percentage class to which his various classes of property for taxation and the taxable valuation thereof have been assigned.

(2) The county assessors of the various counties of the state of Montana are agents of the state department of revenue for the purpose of locating and providing the department a description of all taxable property within the county together with other pertinent information; and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment roles. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(3) The department of revenue shall have full charge of appraising all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform their duties.

(4) The salaries of the county assessor shall be the same amount as provided by law for the salary of the county clerk and recorder;

deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(5) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff and the state appraiser and staff, if such space is reasonably available; if such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department.

History: En. Sec. 1, Ch. 61, L. 1925; amd. Sec. 1, Ch. 100, L. 1939; amd. Sec. 2, Ch. 405, L. 1973.

Amendments

The 1973 amendment designated the language in the former section as subsection (1); substituted "state department of revenue or its agents" for "county assessors" in subsection (1); made a minor change in phraseology; and added subsections (2) through (5).

84-403. (2001.2) **Appeal for taxpayer aggrieved at percentage assignment.** If any taxpayer shall feel aggrieved at the percentage assignment so made by the department of revenue or its agent, he shall have the right to appeal to the county tax appeal board, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county tax appeal board to the state tax appeal board, whose findings shall be final except as to, the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925; amd. Sec. 3, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor"; and substituted references to the county and state tax appeal boards for references to the corresponding boards of equalization.

84-404. (2001.3) **State department of revenue to assign percentage basis, when.** The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state department of revenue, when it makes its annual assessment of the property, which it is required to assess under the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court.

History: En. Sec. 3, Ch. 61, L. 1925; amd. Sec. 49, Ch. 100, L. 1973; amd. Sec. 2, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 100, Laws of 1973, deleted "the constitution or" before "the laws of this state" near the middle of the section.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

84-405. (2001.5) **Assessor's blanks and rolls to be provided by state department of revenue.** It shall be made the duty of the state department of revenue to prescribe such forms of assessment blanks and asssor's rolls as will comply with the above provisions, grouping all the

same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925; amd. Sec. 3, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-406. (2002) **Time of assessment—motor vehicles—mobile homes—livestock—snowmobiles.** (1) The department of revenue or its agent must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first Monday of March next preceding. It must also ascertain and assess all mobile homes arriving in his [each] county after 12 midnight of the first Monday of March next preceding. The procedure provided by this section shall not apply to:

(a) and (b). * * * [Same as parent volume.]

(c) Property defined in section 53-642 as "special mobile equipment" shall be subject to assessment of personal property taxes either on the date that application is made for a special mobile equipment plate, if that date falls between the first day of January and the first Monday of March, or on the first Monday of March.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles and campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall continue to be assessed at full and true value as of the first Monday of March.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the

event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock being fed in feeding pens or enclosures on the first Monday in March may be computed by adding the value of livestock more than six (6) months of age being fed on the last day of each month since the last assessment date and dividing the sum by twelve (12).

(4) The department of revenue or its agent must ascertain and assess all snowmobiles and campers in his [each] county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile or camper was at 12 M of the first day of January in each year; provided, however, that snowmobiles and campers which constitute inventory of snowmobile dealers and camper dealers shall be assessed to the dealers as of 12 M of the first Monday of March in each year.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937; amd. Sec. 2, Ch. 256, L. 1955; amd. Sec. 2, Ch. 245, L. 1963; amd. Sec. 1, Ch. 86, L. 1965; amd. Sec. 2, Ch. 232, L. 1967; amd. Sec. 3, Ch. 290, L. 1967; amd. Sec. 3, Ch. 296, L. 1967; amd. Sec. 1, Ch. 40, L. 1969; amd. Sec. 1, Ch. 180, L. 1969; amd. Sec. 6, Ch. 435, L. 1971; amd. Sec. 3, Ch. 405, L. 1973; amd. Sec. 5, Ch. 414, L. 1973. Cal. Pol. C. Sec. 3628.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 405 and once by Ch. 414. Neither of the amendatory acts mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by the amendments.

Amendments

Chapter 232, Laws of 1967, added paragraph (c) to subsection (1) and made minor changes in style.

Chapter 290, Laws of 1967, added the second and third sentences to the first paragraph of subsection (2), except that Chapter 290 did not contain the words "and new mobile homes" now appearing in said third sentence; it also made minor style changes.

Chapter 296, Laws of 1967, inserted the second sentence in subsection (1); added to subsection (1) the paragraph now designated (d); inserted "except mobile homes" in the first sentence of subsection (2); added the sentence now appearing as the final sentence of the first paragraph of subsection (2), except that Chapter 296 did not contain the words "new motor vehicles and" now appearing therein; it also inserted "Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home" at the beginning of the second paragraph of subsection (2); inserted "other" before "motor vehicle so assessed" in the second paragraph of subsection (2); and made minor style changes.

Chapter 40, Laws of 1969, substituted "12 m." for "12 midnight" where used.

Chapter 180, Laws of 1969, in the second sentence of subsection (2), inserted "and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles" before "except as otherwise provided by section 32-3315."

The 1971 amendment added paragraph (e) to subsection (1); substituted "12 midnight" for "12 m." where used; added subsection (4); and made minor changes in punctuation and phraseology.

Chapter 405, Laws of 1973, substituted references to the state department of revenue for references to the county assessor.

Chapter 414, Laws of 1973, inserted references to campers and camper dealers in subdivision (1)(e) and subsection (4); and changed the time for assessment in subsection (4) from 12 midnight to 12 M.

Effective Dates

Section 3 of Ch. 232, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 1, 1967.

Section 2 of Ch. 40, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 19, 1969.

Section 2 of Ch. 180, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Section 7 of Ch. 435, Laws 1971 provided the act should be in effect from and

after its passage and approval. Approved March 18, 1971.

Section 6 of Ch. 414, Laws 1973 read "This act is effective for the tax year 1974 and thereafter."

References

Swartz v. Berg, 147 M 178, 411 P 2d 736.

84-409. (2003) **Statement—what to contain.** The department of revenue or its agent must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1 to 7. * * * [Same as parent volume.]

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R. C. M. 1921; amd. Sec. 5, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3629.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" at the beginning of the section.

84-410. (2004) **Department of revenue to furnish blanks, etc.** The department of revenue must furnish its agents with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I, ..., do swear that I am a resident of the county of ..... (naming it), and that my post-office address is .....; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county tax appeal board, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R. C. M. 1921; amd. Sec. 6, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3630.

Amendments

The 1973 amendment substituted "department of revenue" and "its agents" near the beginning of the section for "board of county commissioners" and "the assessor"; and substituted "tax appeal board" in the final sentence for "board of equalization."

84-411. (2005) **Statement to be filled out and returned to agent of the department of revenue.** The agent of the department of revenue

may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The agent must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by the agent.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R. C. M. 1921; amd. Sec. 7, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3631.

Amendments

The 1973 amendment substituted references to the agent of the department of revenue for references to the county assessor.

84-412. (2006) **General powers of department of revenue.** The department of revenue has power:

1. To require any person in the state to make and subscribe an affidavit, giving his name and place of residence and post-office address.

2. To subpoena and examine any person in relation to any statement furnished to it, or which discloses property which is assessable in the state; and it may exercise this power in any county where the person whom it desires to examine may be found, but has no power to require such persons to appear before it in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the department, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the state in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the department must, in the respective case, file the affidavit or statement in its office, and transmit a copy of the same, certified by it, to its agent in the county in which such residence or property is therein shown to be. All moneys recovered under the provisions of this section must be paid into the treasury of the county in which the property is located.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R. C. M. 1921; amd. Sec. 8, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3632.

Amendments

The 1973 amendment substituted references to the state department of revenue and its agent for references to the county assessor; substituted references to the state for references to the county; substituted "the treasury of the county in which the property is located" for "the treasury of his county" at the end of the section; and made minor changes in phraseology.

84-413. (2007) **Method of making assessment upon refusal of statement.** If any person, after demand made by the department of revenue, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the department must note the refusal on the assessment book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the department must not be reduced by the county tax appeal board.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R. C. M. 1921; amd. Sec. 9, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3633.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the county assessor; and substituted "county tax appeal board" for "board of county commissioners" at the end of the section.

84-414. (2008) **Assessment of unknown or absent owners.** If the owner or claimant of any property, not listed by another person, is absent or unknown, the department must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907; re-en. Sec. 2008, R. C. M. 1921; amd. Sec. 10, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3635.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-415. (2009) **Assessment of unknown or absent owners—in whose name property to be assessed.** If the name of the absent owner is known to the department, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907; re-en. Sec. 2009, R. C. M. 1921; amd. Sec. 11, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3636.

Amendments

The 1973 amendment substituted "department" for "assessor."

84-427. (2021) **Assessment of railroads, telegraph, telephone and electric light lines.** Railroads operated or situated in one county, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the department of revenue must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R. C. M. 1921; amd. Sec. 12, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "and not assessed by the state board of equalization" following "Railroads operated or situated in one county" at the beginning of the section; and substituted "department of revenue" for "assessor."

84-428. (2022) **Railroads—how assessed.** The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this state must be assessed by the state department of revenue as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R. C. M. 1921; amd. Sec. 4, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the first sentence.

84-429. (2023) **Land—how assessed.** All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The department of revenue or its agent must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. It must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R. C. M. 1921; amd. Sec. 13, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3628.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the assessor.

84-429.7. Classification and appraisal—duties of the department of revenue. It is hereby made the duty of the state department of revenue to accomplish the following:

a to c. * * * [Same as parent volume.]

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state department of revenue. Such maps, plats, forms and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the state department of revenue.

It shall be the duty of the state department of revenue to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

History: En. Sec. 1, Ch. 191, L. 1957; amd. Sec. 14, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the board of county commissioners and state board of equalization; deleted "in such manner as the state board of equalization may direct" from the preliminary clause; substituted "state" for "county" at the end of the second sentence after the lettered clauses; deleted "and the state board of equalization shall provide for the payment to the several counties of the cost of preparing such copy of the record so provided for, as they may require" at the end of the paragraph following the lettered clauses; and deleted "After compliance with the other provisions of this act" from the beginning of the last paragraph.

Jurisdiction of District Court

District court acted beyond its jurisdiction by enjoining board of equalization from revising, grading and valuation of nonirrigated farm land pursuant to this section. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

84-429.8. Property tax administration fund—tax levy for. The state legislature shall create and establish a fund to be known as the "property tax administration fund," and may levy annually a tax not to exceed an amount appropriated therefor by the legislature upon all property in the state subject to taxation, the proceeds of which shall be deposited by the county treasurer to the credit of the state treasurer, and any balance unexpended at the end of any fiscal year shall remain in such fund and be available to carry out the provisions of this act and to maintain and keep current the classification of all taxable lands and appraisals of city and town lots and rural and urban improvements. All moneys in this fund shall be available to the state legislature for appropriation to the proper agency. No moneys shall be expended from this fund without an appropriation by the legislature. All costs and expenses incurred by the department of revenue for such work, labor, services and supplies required by this act, shall be paid by warrants drawn on said fund on claims approved by the department.

History: En. Sec. 2, Ch. 191, L. 1957; amd. Sec. 1, Ch. 23, L. 1965; amd. Sec. 15, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "state legislature" for "board of county commissioners" at the beginning of the section; changed the name of the fund from "Classification and Appraisal Fund" to "property tax administration fund"; deleted from the first sentence a clause establishing the effective date of the section; substituted "not to exceed an amount appropriated therefor by the legislature upon all property in the state" for "one (1) mill upon all property in the state" in the middle of the first sentence; substituted "to the credit of the state treasurer" for "to the credit of such fund" after "deposited by the county treasurer" in the first sentence; inserted the second and third sentences; substituted references to the department of revenue for references to the board of county commissioners in the final sentence; and deleted from the end of the section a clause authorizing the county commissioners to declare an emergency and issue warrants.

Tax Levy

Chapter 479, Laws of 1973, levied a tax of three mills, or so much thereof as the department of revenue finds necessary, for each of the years 1973 and 1974, for the property tax administration fund.

84-429.9. Assessments to be made on classification and appraisal. The assessments of all lands, city and town lots, and all improvements must be made on the classification and appraisal as made or caused to be made by the department of revenue.

History: En. Sec. 3, Ch. 191, L. 1957; amd. Sec. 16, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "must be made" after "improvements" for "The county assessor must base" at the beginning of the section; inserted "or caused to be made" near the end of the section; and substituted "department of revenue" for "board of county commissioners" at the end of the section.

84-429.10. Repealed.

Repeal

Section 84-429.10 (Sec. 4, Ch. 191, L. 1957), relating to initiation of the classification and appraisal, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-429.11. Notice of classification and appraisal to owners—appeals. It shall be the duty of the department of revenue to cause to be mailed

to each owner a notice of the classification of the land owned by him and the appraisal of the improvements thereon. If the owner of any land and improvements be dissatisfied with the classification of his land or the appraisal of the improvements the department of revenue shall give reasonable notice to such taxpayer of the time and place of hearing and hear any testimony or other evidence which the taxpayer may desire to produce at such time and afford the opportunity to other interested persons to produce evidence at such hearing and thereafter the department of revenue shall determine the true and correct classification of such land or appraisal of such improvements and forthwith notify the taxpayer of their determination and when so determined the land shall be classified and improvements appraised in the manner ordered by the department of revenue. If any property owner shall feel aggrieved at the classification and/or the appraisal so made by the department of revenue he shall have the right to appeal to the county tax appeal board and then to the state tax appeal board whose findings shall be final subject to the right of review in the proper court or courts.

History: En. Sec. 5, Ch. 191, L. 1957; amd. Sec. 17, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of county commissioners; and substituted "county tax appeal board and then to the state tax appeal board" for "state board of equalization" in the final sentence.

State Directives

Boards of county commissioners could not ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 458 P 2d 948.

Summary Judgment

In declaratory judgment action in which notice of reclassification was found not to comply with this section, district court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without considering further issues raised by plaintiffs since they lacked standing as to those issues. Mittelstadt v. Buckingham, 156 M 407, 480 P 2d 831.

84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state department of revenue to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

All agricultural lands must be classified and appraised as agricultural lands without regard to the best and highest value use of adjacent or neighboring lands.

2 to 4. * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 191, L. 1957; amd. Sec. 3, Ch. 512, L. 1973; amd. Sec. 5, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 512 and once by Ch. 516.

Chapter 512 made the same changes as did Ch. 516 and made another change as well. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

Chapter 512, Laws of 1973, substituted "department of revenue" for "board of county commissioners" in the preliminary clause; and added the third paragraph to subsection 1.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in the preliminary clause.

Basis for Assessment

County board of equalization properly assessed plaintiff's property on basis of "market value" rather than on basis of agricultural land, even though it was being used for agricultural purposes, where property was within commercial area and its value was much greater than that assigned to agricultural property. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

Boards of county commissioners cannot ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M 335, 485 P 2d 948.

84-437.1. Legislative intent as to agricultural property. Since the market value of many farm properties is based upon speculative purchases which do not reflect the productive capability of farms, it is the legislative intent that bona fide farm properties shall be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

History: En. Sec. 1, Ch. 512, L. 1973.

Title of Act

An act to provide that agricultural land shall be classified, appraised, and assessed according to its value for agricultural purposes without regard to the value it may have for other purposes; and defining agricultural lands, establishing procedure and providing a penalty; amending sections 84-401 and 84-429.12, R. C. M. 1947.

84-437.2. Eligibility of land for valuation as agricultural. Land which is actively devoted to agricultural use shall be eligible for valuation, assessment and taxation as herein provided each year it meets the following qualifications:

(1) It is being actively devoted to agriculture;

(2) The area of such land is not less than five (5) contiguous acres when measured in accordance with the provisions of section 8 [84-437.6], when the gross value of grazing and field crops produced thereon together with any payments received under a crop-land retirement program totals at least one thousand ($1,000) per year; or

(3) It agriculturally produces the equivalent of fifteen per cent (15%) or more of the owners annual gross income; and

(4) (a) Application by the owner of the land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the county assessor in which such land is situated on the form prescribed by the state department of revenue. The county assessor shall continue to accept applications filed within sixty (60) days after October 1 upon payment of a late filing fee in the amount of twenty-five dollars ($25), which shall be paid to the county treasurer.

(b) The county assessor shall have all applications filed under subsection (a) recorded by the county recorder. Whenever land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act is applied to a use other than agricultural, the owner shall notify the county assessor and the county assessor shall cause the following statement to be recorded by the county recorder: "On the ..... day of ....., 19....., this land became subject to the roll-back tax imposed by section 6 [84-437.4]."

(c) Whenever the owner of land which has been in agricultural use and has been valued, assessed and taxed under the provisions of this act does not file an application as provided in subsection (a), then the department of revenue or its agent shall revalue the land as nonagricultural land.

History: En. Sec. 4, Ch. 512, L. 1973.

84-437.3. Agricultural uses only considered in valuation. In classifying land which qualifies as land actively devoted to agricultural use under the test prescribed by this act, and as to which the owner thereof has made timely application for valuation, assessment and taxation hereunder for the tax year in issue, the department of revenue, shall consider only those indicia of value which such land has for agricultural use.

History: En. Sec. 5, Ch. 512, L. 1973.

84-437.4. Roll-back tax—computation. When land which is or has been in agricultural use and is or has been valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural, it shall be subject to an additional tax hereinafter referred to as the "roll-back tax," which tax shall be a lien upon the land and become due and payable at the time of the change in use.

As used in this act, the word "roll-back" means the period preceding the change in use of the land not to exceed four (4) years during which the land was valued, assessed and taxed under the provisions of this act.

The assessor shall ascertain the following in determining the amount of the roll-back tax chargeable on land which has undergone a change in use:

(1) the full and fair value of the land as determined by the department of revenue under the valuation standard applicable to land in the county not valued, assessed and taxed under the provisions of this act;

(2) the amount of the land assessment as unsubdivided and unimproved land for the period of the roll-back, by multiplying such full and fair market value by the number of years included in the roll-back and by multiplying the product obtained, by the assessment ratio in effect in the year in which the change in use of land is made as determined by the state;

(3) the average mill levy applied in the taxing district in which the land is located by dividing the aggregate mill levy actually applied in each respective year of the roll-back by the number of years, included in the roll-back; and

(4) the amount of the roll-back tax by multiplying the taxable value computed from the amount of the assessment determined under subsec-

tion (2) hereof by the average mill levy determined under subsection (3) hereof, less the amount of real property taxes actually paid during the period of the roll-back.

History: En. Sec. 6, Ch. 512, L. 1973.

84-437.5. Roll-back tax procedures governed by nonagricultural provisions. The assessment of the roll-back tax imposed by section 5 [84-437.3], the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the department of revenue or local tax appeal board affecting such roll-back tax, shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year.

History: En. Sec. 7, Ch. 512, L. 1973.

84-437.6. Improvements on agricultural land. In determining the total area of land actively devoted to agricultural use there shall be included the area of all land under barns, sheds, silos, cribs, greenhouses and like structures, lakes, dams, ponds, streams, irrigation ditches and like facilities, but land under and such additional land as may be actually used in connection with the farmhouse shall be excluded in determining such total area.

History: En. Sec. 8, Ch. 512, L. 1973.

84-437.7. Application for valuation as agricultural land. Application for valuation, assessment and taxation of land in agricultural use under this act shall be on a form prescribed by the state department of revenue, and provided for the use of the applicants by the county assessor. The form of application shall provide for the reporting of information pertinent to the provisions of this act. A certification by the landowner that the facts set forth in the application are true may be prescribed by the state department of revenue to be in lieu of a sworn statement to that effect. Statements so certified shall be considered as if made under oath and subject to the same penalties as provided by law for perjury.

History: En. Sec. 9, Ch. 512, L. 1973.

84-437.8. Continuance of valuation as agricultural land—roll-back tax attaching on change of use. Continuance of valuation, assessment and taxation under this act shall depend upon continuance of the land in agricultural use and compliance with the other requirements of this act and not upon continuance in the same owner of title to the land. Liability to the roll-back tax shall attach when a change in use of the land occurs but not when a change in ownership of the title takes place if the new owner continues the land in agricultural use, under the conditions prescribed in this act.

History: En. Sec. 10, Ch. 512, L. 1973.

84-437.9. Roll-back tax on change of use of part of tract. Separation or split off of a part of the land which is being valued, assessed and taxed

under this act, either by conveyance or other actions of the owner of such land, for a use other than agricultural, shall subject the land so separated to liability for the roll-back tax applicable thereto, but shall not impair the right of the remaining land to continuance of valuation, assessment and taxation hereunder, provided it meets the minimum requirements of this act.

History: En. Sec. 11, Ch. 512, L. 1973.

84-437.10. Agricultural land taken under eminent domain. The taking of land which is being valued, assessed and taxed under this act by right of eminent domain shall not subject the land so taken to the roll-back tax herein imposed.

History: En. Sec. 12, Ch. 512, L. 1973.

84-437.11. Tract crossing county line considered as whole. Where contiguous land in agricultural use in one ownership is located in more than one (1) county, compliance with the minimum requirements shall be determined on the basis of the total area and value of farm crops on such land and not the area or value of farm crops on land which is located in the particular county.

History: En. Sec. 13, Ch. 512, L. 1973.

84-437.12. Factual details as to agricultural land to be shown on tax list. The factual details to be shown on the assessor's tax list and duplicate with respect to land which is being valued, assessed and taxed under this act shall be the same as those set forth by the assessor with respect to other taxable property in the county.

History: En. Sec. 14, Ch. 512, L. 1973.

84-437.13. Rules—regulations—forms. The state department of revenue is empowered to promulgate such rules and regulations and to prescribe such forms as it shall deem necessary to effectuate the purposes of this act.

History: En. Sec. 15, Ch. 512, L. 1973.

84-437.14. Violation as misdemeanor. Any person who violates any provision of this act shall be guilty of a misdemeanor.

History: En. Sec. 16, Ch. 512, L. 1973.

84-439. (2033) **Property concealed, misrepresented, etc.** Any property willfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the county tax appeal board.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R. C. M. 1921; amd. Sec. 18, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3648.

Amendments

The 1973 amendment substituted "county tax appeal board" for "board of county commissioners" at the end of the section.

84-440. (2034) **Property having escaped assessment.** Any property discovered by the department of revenue to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3723, Pol. C. 1895; re-en. Sec. 2542, Rev. C. 1907; re-en. Sec. 2034, R. C. M. 1921; amd. Sec. 19, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3649.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor."

84-441. (2035) **Supplemental assessment.** When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R. C. M. 1921; amd. Sec. 20, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "by the assessor" following "must be collected" near the end of the section.

84-443 to 84-447. (2037 to 2041) **Repealed.**

Repeal

Sections 84-443 to 84-447 (Secs. 40 to 42, p. 87, L. 1891; Secs. 3734 to 3736, 4012, Pol. C. 1895; Sec. 1, Ch. 44, L. 1909; Sec. 1, Ch. 43, L. 1925; Sec. 1, Ch. 135, L. 1929; Sec. 1, Ch. 56, L. 1935; Sec. 1, Ch. 14, L. 1943; Sec. 1, Ch. 115, L. 1949), relating to duties and liabilities of the county assessor and his deputies, were repealed by Sec. 120, Ch. 405, Laws 1973.

84-448. (2042) **Annual settlements.** The department of revenue, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R. C. M. 1921; amd. Sec. 21, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "The department of revenue" for "Every assessor" at the beginning of the section.

84-449. (2043) **Department of revenue to collect farm statistics.** It shall be the duty of the department of revenue, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R. C. M. 1921; amd. Sec. 22, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the department of revenue" for "each county assessor and his deputies" near the beginning of the section.

84-450. (2044) **Delivery to commissioner of agriculture.** The original blanks upon which the statistics are gathered by the department of revenue

shall be returned to the commissioner of agriculture immediately on completion of the assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R. C. M. 1921; amd. Sec. 23, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor and his deputies"; and made minor changes in phraseology.

84-451. (2045) **Statistics, how obtained.** If for any reason the department of revenue is unable to obtain the statistics from any farm owner, operator or renter, it shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921; re-en. Sec. 2045, R. C. M. 1921; amd. Sec. 24, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy"; and made a minor change in style.

84-452. (2046) **Penalty for refusal to furnish statistics.** Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or willfully furnishes fraudulent information to the department of revenue, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; re-en. Sec. 2046, R. C. M. 1921; amd. Sec. 25, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor or his deputy."

84-453. (2047) **Repealed.**

Repeal

Section 84-453 (Sec. 5, Ch. 187, L. 1921), relating to penalty for refusal or willful neglect of duty by the county assessor or deputy, was repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 5—ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

Section

84-501. Property—how listed.
84-502.1. Form of assessment book.
84-504. Map book.
84-505. Assessment and map book delivered to and kept by clerk.
84-506. Statement by agent to the department of revenue.
84-507. Penalty for failure of agent of department of revenue to complete assessment book and transmit statement.
84-509. Department to furnish assessor maps.
84-510. List of lands sold by state to be transmitted by state land agent.
84-511. Defects in form of assessment book may be supplied.
84-515. Fines and forfeitures to be paid to county treasurer.

84-501. (2048) **Property—how listed.** The state department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state, and in which must be specified in separate columns, under the appropriate head:

1 to 15. * * * [Same as parent volume.]

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R. C. M. 1921; amd. Sec. 26, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3650.

Amendments

The 1973 amendment substituted "state department of revenue" for "assessor" in the preliminary clause; deleted "unless otherwise directed by the state board of equalization" following "alphabetically arranged" in the preliminary clause; substituted "state" for "county" in the preliminary clause; and deleted subdivision 16 covering other items required by the state board of equalization.

84-502. (2049) **Repealed.**

Repeal

Section 84-502 (Sec. 3725, Pol. C. 1895), relating to the form of the assessment book, was repealed by Sec. 120, Ch. 405, Laws 1973. For new law, see sec. 84-502.1.

84-502.1. Form of assessment book. The form of the assessment book must be as directed by the state department of revenue.

History: En. 84-502.1 by Sec. 27, Ch. 405, L. 1973.

Title of Act

An act to provide for a general revision of the tax laws of Montana to implement article VIII, sections 3 and 7 of the 1972 Montana constitution by designating the state department of revenue as the tax administration agency for the state of Montana, by creating a state tax appeal board, by designating county assessors as agents of the state department of revenue, and by providing for county tax appeal boards; and to repeal sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735.

84-503. (2050) **Repealed.**

Repeal

Section 84-503 (Sec. 1697, 5th Div. Comp. Stat. 1887; Sec. 19, p. 91, Ex. L. 1887; Sec. 36, p. 86, L. 1891), relating to the county assessor's affidavit on completion of the assessment book, was repealed by Sec. 120, Ch. 405, Laws 1973.

84-504. (2051) **Map book.** The department of revenue must, in a map book, make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R. C. M. 1921; amd. Sec. 28, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor"; and deleted "when directed so to do by the board of commissioners" following "The department of revenue must."

84-505. (2052) **Assessment and map book delivered to and kept by clerk.** As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the county tax appeal board will meet to consider protests concerning assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R. C. M. 1921; amd. Sec. 29, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3654.

Amendments

The 1973 amendment substituted "county tax appeal board" for "board of commissioners"; and substituted "consider protests concerning assessments" for "equalize assessments."

84-506. (2053) **Statement by agent to the department of revenue.** On the second Monday in July in each year, the agent of the department of revenue in each county must transmit to the state department of revenue a statement, showing:

1 to 4. * * * [Same as parent volume.]

History: En. Sec. 3729, Pol. C. 1895; re-en. Sec. 2548, Rev. C. 1907; re-en. Sec. 2053, R. C. M. 1921; amd. Sec. 30, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3655.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "assessor of"; and substituted "state department of revenue" for "state board of equalization" in the preliminary clause.

84-507. (2054) **Penalty for failure of agent of department of revenue to complete assessment book and transmit statement.** Every agent of the department of revenue who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state department of revenue, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the department, or to be deducted from his salary by the director of revenue.

History: En. Sec. 3730, Pol. C. 1895; re-en. Sec. 2549, Rev. C. 1907; re-en. Sec. 2054, R. C. M. 1921; amd. Sec. 31, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3656.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "assessor"; substituted "department of revenue" for "board of equalization"; substituted "department" for "county"; and substituted "director of revenue" for "board of county commissioners."

84-509. (2056) **Department to furnish assessor maps.** The department of revenue must provide maps for the use of its agents, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a state charge, and must be paid from the state general fund.

History: En. Sec. 3732, Pol. C. 1895; re-en. Sec. 2551, Rev. C. 1907; re-en. Sec. 2056, R. C. M. 1921; amd. Sec. 32, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3658.

Amendments

The 1973 amendment substituted "department of revenue" for "board of county commissioners"; substituted "its agents" for "the assessor"; and substituted "state" for "county" in two places in the last sentence.

84-510. (2057) **List of lands sold by state to be transmitted by state land agent.** On or before the first Monday in March in each year, the state land agent must make out and transmit to the department of revenue where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895; re-en. Sec. 2552, Rev. C. 1907; re-en. Sec. 2057, R. C. M. 1921; amd. Sec. 33, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3659.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor of each county."

84-511. (2058) **Defects in form of assessment book may be supplied.** Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the department of revenue at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. 2728, Rev. C. 1907; re-en. Sec. 2058, R. C. M. 1921; amd. Sec. 34, Ch. 405, L. 1973, Cal. Pol. C. Sec. 3881.

Amendments

The 1973 amendment substituted "department of revenue" for "assessor."

84-515. (2062) **Fines and forfeitures to be paid to county treasurer.** Except for the forfeiture described in section 84-507, R. C. M. 1947, all fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. 2733, Rev. C. 1907; re-en. Sec. 2062, R. C. M. 1921; amd. Sec. 35, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "Except for the forfeiture described in section 84-507, R. C. M. 1947" at the beginning of the section; and made a minor change in phraseology.

CHAPTER 6—EQUALIZATION OF TAXES AND COUNTY TAX APPEAL BOARD

Section
84-601. County tax appeal board—when to hear protests.
84-602. Equalization of assessments.
84-603. Application for reduction in valuations.
84-604. Examination of applicant.
84-605. Change of valuation of class of property—hearing necessary.
84-606. Witnesses may be subpoenaed.
84-607. Agent to be present—statement of property not assessed.
84-608. State department of revenue to use records in equalizing.
84-609. Department may direct assessment in certain instances.
84-610. Department must keep record of proceedings and make oath.

84-601. (2113) **County tax appeal board—when to hear protests.** The board of county commissioners of each county shall appoint a three (3) member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve; they shall serve four (4) year terms and shall receive travel expenses and per diem only when the county tax appeal board is in session to hear taxpayer appeals from property tax assessments. Travel expenses and per diem shall be paid from the appropriation to the state tax appeal board. The first term shall run from July 1, 1973, through December 31, 1976. The county tax appeal board must meet on the third Monday of July in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the second Monday in August. In connection with any such appeal, the county tax appeal board shall have the authority to change any assessment or fix the assessment at some other level.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R. C. M. 1921; amd. Sec. 36, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3672.

Amendments

The 1973 amendment substituted the first four sentences for "The board of county commissioners is the county board of equalization and"; inserted "The county tax appeal board" at the beginning of the fifth sentence; substituted "hear protest concerning assessments made by the department of revenue" for "to examine the assessment book and equalize the assessment of property in the county" at the end of the fifth sentence; substitued "hearing protests" in the sixth sentence for "equalization"; and added the last sentence.

84-602. (2114) **Equalization of assessments.** The department of revenue has power after giving notice, in writing, to the taxpayer, by registered or certified mail, addressed to him at his last known place of residence, of its intention to increase or lower his assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, which notice shall specify the date and hour when he may appear and be heard thereon, which date shall not be less than five (5) days from date of mailing such notice, and immediately after reaching a decision, the department shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered or certified mail, addressed to the taxpayer at his last known place of residence. The department also has power to raise or lower the valuation of all the property in a class by a certain percentage, in the event that any class of property is assessed as a class, at more or less than its actual value, by its agent and the valuation of such property within the county demands a general reclassification.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933; amd. Sec. 1, Ch. 196, L. 1957; amd. Sec. 37, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of county commissioners; inserted "to raise or lower the valuation of all the property in a class by a certain percentage" in the second sentence; substituted "its agent" for "the county assessor" in the second sentence; and deleted "by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of commissioners" from the end of the second sentence.

DECISIONS UNDER FORMER LAW

Powers of Board of County Commissioners

Boards of county commissioners could not ignore directives of state board of equalization on subject of timberland valuation and make their own valuation on theory that state board's directives were invalid because not supported by evidence since validity would have to be adjudicated and since, in any event, county boards do not have power of increasing valuations. State ex rel. Conrad v. Managhan, 157 M. 335, 485 P. 2d 948.

84-603. (2115) **Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the county tax appeal board on or before the 1st day of August, a written application therefor. Said application shall state the post-office address of the applicant, shall speci-

fically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945; amd. Sec. 2, Ch. 196, L. 1957; amd. Sec. 38, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3674.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" in the first sentence; deleted "verified by his oath" from the end of the first sentence; and substituted "department of revenue" for "board of county commissioners" at the beginning of the last sentence.

84-604. (2116) **Examination of applicant.** Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be reduced to writing and preserved, and transcribed if taken in shorthand or stenotype. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within three (3) days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than three (3) days after the third Monday in August.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933; amd. Sec. 3, Ch. 196, L. 1957; amd. Sec. 39, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3675.

Amendments

The 1973 amendment inserted "county tax appeal" before "board" at the beginning of the first sentence; deleted "except where the investigation is made by the county commissioners, as such board of equalization, and the change applies to all of certain class of property in the county" from the end of the second sentence; and added the last sentence.

84-605. (2116.1) **Change of valuation of class of property—hearing necessary.** The state department of revenue may hold a public hearing to determine the value of any class of property in any county and shall have authority to raise or lower the value of any class of property on the basis of testimony adduced at such hearing.

History: En. Sec. 4, Ch. 187, L. 1933; amd. Sec. 40, Ch. 405, L. 1973.

Amendments

The 1973 amendment completely rewrote this section. For prior law, see parent volume.

84-606. (2117) **Witnesses may be subpoenaed.** Upon the hearing of the application the department may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C.

1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R. C. M. 1921; amd. Sec. 6, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3676.

Amendments

The 1973 amendment substituted "department" for "board."

84-607. (2118) **Agent to be present—statement of property not assessed.** During the hearing of the department the agent of the state who assessed the property whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the department, and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of the property under consideration at the hearing; and shall, when requested by the department or any party to the proceeding, furnish to the department a written statement showing the basis for his valuation of any comparable property in the vicinity of the property under consideration at the hearing. At the meeting the agent shall present to the department a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or othewise, has been assessed for less than its correct value; thereupon it shall be the duty of the department immediately to investigate the statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, the department shall order the agent to correct such assessment in the manner provided for the correction of assessments by the department of revenue.

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1951; amd. Sec. 41, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3677.

Amendments

The 1973 amendment substituted "hearing of the department" and "agent of the state who assessed the property" for "session of the board" and "assessor and any deputy" near the beginning of the first sentence; substituted references to the department of revenue for references to the board of equalization; substituted references to the agent of the department of revenue for references to the county assessor or deputy; deleted "and while sitting as a board of equalization" following "the duty of the department immediately" in the middle of the last sentence; and inserted "order the agent to" near the end of the last sentence.

84-608. (2119) **State department of revenue to use records in equalizing.** The state department of revenue must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of each county, and may require entry upon the assessment book of any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R. C. M. 1921; amd. Sec. 42, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3679.

Amendments

The 1973 amendment substituted the reference to the state department of revenue for a reference to the board of county commissioners; deleted references to the assessor; and made minor changes in phraseology.

84-609. (2120) **Department may direct assessment in certain instances.** The department of revenue may direct its agent to assess any

taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the department so incomplete as to render doubtful the collection of the tax; but the county clerk must notify all persons interested, by letter deposited in the post office, postpaid, and addressed to the person interested, within ten days after the action is taken.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2581, Rev. C. 1907; re-en. Sec. 2120, R. C. M. 1921; amd. Sec. 43, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3681.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the board of county commissioners; substituted references to the agent of the state department of revenue for references to the county assessor; inserted "county" before "clerk must notify all persons" near the end of the section; substituted "within ten days after" for "at least ten days before" near the end of the section; and deleted "of the day next when the matter will be investigated" from the end of the section.

84-610. (2121) **Department must keep record of proceedings and make oath.** The department must record, in a book to be kept for that purpose, all changes, corrections, and orders made by it and must direct its agent to enter upon the assessment book all changes and corrections made by it.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2502, Rev. C. 1907; re-en. Sec. 2121, R. C. M. 1921; amd. Sec. 44, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3682.

Amendments

The 1973 amendment substituted "department" for "county clerk," deleted "during its session, or as soon as possible after its adjournment" following "and orders made by it and"; inserted "direct its agent to" near the end of the section; and deleted "and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: (form of affidavit deleted)" from the end of the section.

CHAPTER 7—STATE DEPARTMENT OF REVENUE AND TAX APPEAL BOARD

Section
84-701. State tax appeal board—appointment of members—term of office.
84-702. Qualification and compensation.
84-703. Organization, quorum, sessions.
84-704. Definitions.
84-705. Employees—expenses—minutes—rules.
84-706. Office, furnishings and supplies.
84-708. Powers and duties.
84-708.1. Powers and duties of the state department of revenue.
84-708.2. Central reporting system for identification of corporations.
84-708.3. Rules and regulations for central reporting system.
84-708.4. List of corporations furnished by secretary of state.
84-708.5. Labor department to furnish list of corporations.
84-708.6. List of corporations compiled by revenue department.
84-708.7. Cross-referencing of lists by department of revenue.
84-708.8. Lists of corporations not open to inspection.
84-709. Appeal to state tax appeal board—hearing.
84-709.1. Judicial review of contested cases.
84-710. Notice of intention to change assessment.
84-711. Assessment of omitted property—limitation.
84-712. Statement of changes to be sent to county clerk.
84-713. Determination of state rate of taxation—notice of.
84-714. Penalty for refusal to furnish information.

84-715. Duties of public officers.
84-716. Hearings, witnesses, contempt, fees and subpoenas.
84-717. Seal.
84-719. Assessment and apportionment by department of revenue—when made.
84-720. Transmission of assessment and apportionment to county clerk.
84-721. Entering of state department of revenue's assessment in assessment book.
84-722. Change of assessment—application—hearing—reassessment.
84-723. Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue.
84-724. Destruction of tax records authorized—procedure.
84-725. Suspense account for receipts and refunds.
84-726. Refund of overpayments—time of filing claims for refund—procedure.
84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration.
84-728. Valuation of interstate fleets—determination of aggregate tax due.
84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration.
84-730. Situs in state of proportionally registered fleets—collection of property tax.
84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee.
84-733. Corporation license tax clearance certificates furnished—fee.
84-734. Fees to reimburse department for costs—deposit in general fund.

84-701. (2122.1) **State tax appeal board—appointment of members—term of office.** The members of the state board of equalization shall constitute the first members of the state tax appeal board as provided in this section. On the effective date of this act, there shall be created a state tax appeal board which shall be composed of three members to be appointed by the governor for staggered terms by and with the advice and consent of the senate provided, however, a member so appointed may serve until the next regular session of the legislature without such advice and consent. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by the governor subject to confirmation by the senate during the next legislative session. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923; amd. Sec. 50, Ch. 100, L. 1973; amd. Sec. 45, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Chapter 405 was later in date of approval. Neither amendatory act mentioned or incorporated the changes made by the other. The acts appear not to conflict except possibly with respect to the method of appointment of board members. In this respect, the compiler has used the language of Ch. 405.

Amendments

Chapter 100, Laws of 1973, deleted "created by article XII of the constitution as amended" after "board of equalization" in the former first sentence; deleted second and third sentences relating to the appointment and terms of office of the first members of the commission; deleted "in accordance with the provisions of the constitution" from the end of the present fourth sentence; and made minor changes in phraseology.

Chapter 405, Laws of 1973, substituted two new sentences for the first three sentences in the parent volume; substituted "by the governor subject to confirmation by the senate during the next legislative session" for "by appointment in accordance with the provisions of the constitution" at the end of the fourth sentence; and deleted "biennial" before "session of the legislative assembly" in the final sentence.

84-702. (2122.2) **Qualification and compensation.** The persons to be appointed as members of the state tax appeal board shall be such as are

known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in section 82A-108, R. C. M. 1947. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply. The member designated chairman as provided for in 84-703 shall receive additional compensation of not more than five hundred dollars ($500) per annum payable in the same manner as the salary. The state tax appeal board shall be paid per diem and travel expenses when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923; amd. Sec. 1, Ch. 109, L. 1953; amd. Sec. 8, Ch. 225, L. 1963; amd. Sec. 13, Ch. 237, L. 1967; amd. Sec. 46, Ch. 405, L. 1973.

Amendments

The 1967 amendment deleted a sentence setting maximum salary for members at $10,000; substituted three sentences providing for salaries to be specified in general appropriation acts or to be established by the board of examiners, based on prescribed criteria, if the legislature failed to establish salaries; and made minor style changes.

The 1973 amendment substituted "state tax appeal board" for "board of equalization" in the first sentence; deleted the three sentences inserted by the 1967 amendment and another sentence requiring monthly payment of salaries; inserted new fourth and fifth sentences; substituted "designated chairman" for "elected chairman" at the beginning of the sixth sentence; extended the final sentence to the entire board instead of just the chairman; substituted "per diem and travel expenses" in the final sentence and "actual traveling and other expenses"; substituted "capital" for "capitol" in the final sentence; and made minor changes in phraseology.

84-703. (2122.3) **Organization, quorum, sessions.** The members of the state tax appeal board shall without delay, meet at the state capital and the governor shall designate one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Saturdays, Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, Ch. 3, L. 1923; amd. Sec. 47, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "the state tax appeal board" for "said board of equalization first appointed" near the beginning of the first sentence; substituted "the governor shall designate" for "shall organize and elect" near the end of the first sentence; and inserted "Saturdays" in the third sentence.

84-704. (2122.4) **Definitions.** (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state tax appeal board.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 3, L. 1923; amd. Sec. 48, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "tax appeal board" for "board of equalization" at the end of subsection (1).

84-705. (2122.5) **Employees — expenses — minutes — rules.** The state tax appeal board may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a tax appeal board and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; amd. Sec. 1, Ch. 82, L. 1947; amd. Sec. 49, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "subject to the provisions of sections 59-901 and 59-902" from the beginning of the first sentence; substituted "tax appeal board" for "board of equalization" in the first and last sentences; and deleted a third sentence authorizing the former board to require the assistance of engineers employed by other state agencies.

84-706. (2122.6) **Office, furnishings and supplies.** The board shall keep its office at the capital, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923; amd. Sec. 50, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "capital" for "capitol."

84-707. (2122.7) **Repealed.**

Repeal

Section 84-707 (Sec. 7, Ch. 3, L. 1923), relating to continuity between the former state board of equalization and its predecessor, was repealed by Sec. 58, Ch. 100, Laws 1973. Chapter 405, Laws of 1973 purported to amend this section, but the purported amendment was void under the rule in section 43-515.

84-708. (2122.8) **Powers and duties.** It shall be the duty of the state tax appeal board:

(1) To prescribe rules and regulations for the tax appeal boards of the different counties in the performance of their duties;

(2) To hear appeals from decisions of the county tax appeal boards;

(3) To hear appeals from decisions of the department of revenue in regard to business licenses, property assessments, taxes, and penalties.

(4) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the state tax appeal board may be administered by a member of the board or his agent. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or

refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

(5) The state tax appeal board shall also have the duties of an appeal board relating to such other matters as may be provided by law.

History: En. Sec. 8, Ch. 3, L. 1923; amd. Sec. 1, Ch. 137, L. 1957; amd. Sec. 1, Ch. 227, L. 1963; amd. Sec. 1, Ch. 211, L. 1971; amd. Sec. 52(a), Ch. 405, L. 1973.

Amendments

The 1971 amendment inserted in former subdivision (3) a clause authorizing the former board to apportion the assessed value of telegraph or telephone microwave electronic equipment among the counties; and made minor changes in style.

The 1973 amendment completely rewrote the section.

Effective Date

Section 2 of Ch. 211, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 4, 1971.

Cross-References

Continuation of board's functions, sec. 82A-1803 (1).

County Board Authority

County board of equalization possesses jurisdiction and authority to direct and sanction classification, appraisal and assessment of rural and urban improvements, using "market value" as basis and classifying them according to use or uses other than those to which such land is actually devoted. Mohland v. State Board of Equalization, 155 M 49, 466 P 2d 582, certiorari denied, 400 US 940, 91 S Ct 232.

84-708.1. Powers and duties of the state department of revenue. (1) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights of way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one (1) county in the state, and to apportion such assessments to the counties in which such properties are located on a mileage basis, or in the case of telegraph or telephone microwave electronic equipment, which has no physical connection with the total system, but is an integral part of such system, apportion the valuation for assessment of such company in this state among the several counties of this state in such proportion as will fairly represent the valuation for assessment within each such county, utilizing commonly recognized methods of apportioning as shall be just and equitable, provided, however, that lots and parcels of real estate not included in right of way, with the buildings, structures, and improvements thereon, dams and powerhouses, depots, stations, shops, and other buildings, erected upon right of way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the agent of the department of revenue in the county wherein they are situate.

(2) To transmit to the county clerk of each county its apportionment of all assessments made by the department.

(3) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any

county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over its agents and any officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the state department of revenue is empowered to organize, and it shall be its duty to schedule and hold area schools within the state for appraisers and assessors as often as is deemed necessary in the judgment of the department and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held, when deemed necessary. The department shall notify all assessors and appraisers at least six (6) months before such school is scheduled and it shall be the duty of all assessors and appraisers to attend and the cost of their attendance shall be borne by the state.

(5) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the department.

(9) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly

the information required by this section within the time set by the department. Upon completion of such inspection and examination the department shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the department to secure the necessary information. Within sixty (60) days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the department shall have authority to investigate and determine.

(12) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department shall have authority to investigate and determine.

(13) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the department, and to furnish the governor such assistance as he may require.

(16) To transmit to the governor and to each member of the legislature twenty (20) days before the meeting of the legislature, a report of the department, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improve-

ments in the system of taxation, together with such measures as may be formulated for the consideration of the legislature; and to include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

History: En 84-708.1 by Sec. 53, Ch. 405, L. 1973.

84-708.2. Central reporting system for identification of corporations. It shall be the duty of the department of revenue to establish a central reporting system to assist in the identification of corporations, foreign and domestic, which transact business within the state of Montana and/or are subject to taxation by the state of Montana pursuant to the provisions of Title 84.

History: En. Sec. 1, Ch. 469, L. 1973.

Title of Act

An act to establish a central reporting system within the department of revenue to assist in the identification of corporations transacting business within the state of Montana and/or subject to taxation by the state of Montana; requiring the secretary of state and the department of labor and industry to provide lists relating to corporations; providing for the administration of the act; providing for the lists as a public record; and providing an effective date.

84-708.3. Rules and regulations for central reporting system. The director of the department of revenue shall promulgate rules and regulations to accomplish the purposes of this act.

History: En. Sec. 2, Ch. 469, L. 1973.

84-708.4. List of corporations furnished by secretary of state. The secretary of state shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 15, chapter 22, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 3, Ch. 469, L. 1973.

84-708.5. Labor department to furnish list of corporations. The commissioner of the department of labor and industry shall direct a list of all corporations, foreign and domestic, subject to the terms of Title 87, chapter 1, to the department of revenue. The list shall include the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) such other information as the director of the department of revenue may require to administer the purposes of this act.

History: En. Sec. 4, Ch. 469, L. 1973.

84-708.6. List of corporations compiled by revenue department. The department of revenue shall compile a list of all corporations, foreign and domestic, subject to taxation by the state of Montana under the terms of Title 84, to be filed in the central reporting system. Said list shall contain the following information:

(1) the name of the corporation;

(2) the principal office of the corporation;

(3) the name and address of the registered agent of the corporation in Montana;

(4) whether the corporation filed such reports, returns, and other information pursuant to the terms of Title 84, chapters 15 and 69.

History: En. Sec. 5, Ch. 469, L. 1973.

84-708.7. Cross-referencing of lists by department of revenue. The department of revenue shall maintain the lists referred to in sections 3, 4 and 5 [84-708.4, 84-708.5 and 84-708.6] in such a manner as to cross-reference the information contained in the lists for the purpose of determining whether corporations, foreign and domestic, have complied with the terms of Title 84, chapters 15 and 69, and the same list shall constitute a public record.

History: En. Sec. 6, Ch. 469, L. 1973.

84-708.8. Lists of corporations not open to inspection. The provisions of section 84-1507 shall not apply to the lists provided under the provisions of this act.

History: En. Sec. 7, Ch. 469, L. 1973.

Effective Date

Section 8 of Ch. 469, Laws 1973 read "This act shall be effective July 1, 1974."

84-709. (2122.9) **Appeal to state tax appeal board—hearing.** Any person, firm or corporation or the department of revenue in behalf of the state, or any municipal corporation, aggrieved by the action of any county tax appeal board, may appeal to the state board by filing with the county tax appeal board a notice of appeal, and a duplicate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five days' notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members and the person so designated shall have and

exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board.

History: En. Sec. 9, Ch. 3, L. 1923; amd. Sec. 1, Ch. 33, L. 1939; amd. Sec. 54, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted references to county tax appeal boards for references to county boards of equalization; deleted "to its secretary, counsel or chief auditor for the conduct of such hearing," following "refer any such appeal to one of its members" in the third sentence; and made a minor change in style.

84-709.1. Judicial review of contested cases. (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision in a contested case is entitled to judicial review under this act.

(2) Proceedings for review shall be instituted by filing a petition in district court within thirty (30) days after service of the final decision of the state tax appeal board, or if a rehearing is requested within thirty (30) days after the decision thereon.

History: En. 84-708.1 by Sec. 52(b), Ch. 405, L. 1973.

Compiler's Notes

Sections 52(b) and 53 of Chapter 405, Laws of 1973 both enacted new sections and assigned the number 84-708.1 to them. The compiler has renumbered this section to avoid confusion and for orderly arrangement.

84-710. (2122.10) **Notice of intention to change assessment.** When the state department of revenue shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state tax appeal board), the department shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by certified letter deposited in the post office postpaid, and directed to said taxpayer at his last known place of residence, at least ten (10) days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state department of revenue shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the department shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923; amd. Sec. 1, Ch. 89, L. 1959; amd. Sec. 55, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization, except that in the parenthetical phrase within the first sentence, the reference to the state tax appeal board was substituted for a reference to the state board of equalization.

Judicial Power

District court acted beyond its jurisdiction by enjoining board of equalization from holding hearing, pursuant to this section, concerning revision of grading and valuation of nonirrigated farm land. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

DECISIONS UNDER FORMER LAW

Hearings and Orders

The state board of equalization is granted the power to hold hearings and issue orders when it contemplates changing the assessed value of property in a county pursuant to this section. State ex rel. State Board of Equalization v. Price, 157 M 134, 483 P 2d 284.

84-711. (2122.11) **Assessment of omitted property — limitation.** Whenever the state department of revenue shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the department may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its assessed valuation, the year for which it is assessed and the county in which the same is assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the department, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by its agent; provided, however, that before making any such assessment the state department of revenue shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed.

History: En. Sec. 11, Ch. 3, L. 1923; amd. Sec. 56, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

84-712. (2122.12) **Statement of changes to be sent to county clerk.** The department of revenue shall transmit to each county clerk a statement of the changes made by the department in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the department resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923; amd. Sec. 57, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "secretary of the board" near the beginning; and substituted references to the department for references to the board.

84-713. (2122.13) **Determination of state rate of taxation—notice of.** Between the first and third Mondays of August of each year, the governor must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent (12%) for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The state department of revenue must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state department of revenue thereof.

History: En. Sec. 13, Ch. 3, L. 1923; amd. Sec. 1, Ch. 19, L. 1969; amd. Sec. 7, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "governor must determine" for "board must determine" before "the rate of state tax" in the first sentence; and substituted "The state board of equalization" for "The board" at the beginning of the last sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second sentence.

Temporary Provision

The legislature levied a tax of 2 mills for 1973 and 1974.

84-714. (2122.14) **Penalty for refusal to furnish information.** If any person shall refuse inspection of any books or records when requested by the department or its authorized agent, or shall refuse or neglect to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property the department shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The department shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the department and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice file an appeal with the state tax appeal board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) day after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the department in making such assessment and imposing such penalty by serving on the department and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court or the state tax appeal board shall determine whether the department of revenue was entitled to inspect such books or

records, or was entitled to the information requested by the department, and if the court or board shall find that the department was entitled to inspect such books or records or was entitled to the information requested by the department, the court or board shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the department but if the court or board shall find that the department was not entitled to inspect such books or records, or was not entitled to the information requested by the department, then the court or board shall enter a judgment changing and modifying the assessment made by the department by striking out the penalty added thereto by the department.

History: En. Sec. 14, Ch. 3, L. 1923; amd. Sec. 58, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted "file an appeal with the state tax appeal board" for "furnish all information requested by the board" in clause (1) of the second sentence; and inserted references to the state tax appeal board following references to the court in the last sentence.

84-715. (2122.15) **Duties of public officers.** It shall be the duty of all public officers of the state and of any municipality to give to the department information in their possession relating to taxation when required by the department, and to co-operate with and aid the department in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923; amd. Sec. 8, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-716. (2122.16) **Hearings, witnesses, contempt, fees and subpoenas.** Oaths to witnesses in any investigation by the department may be administered by the director of revenue or his agent. In case any witness shall fail to obey any summons to appear before the department, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the department shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the department.

History: En. Sec. 16, Ch. 3, L. 1923; amd. Sec. 59, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; and substituted "director of revenue or his agent" for "secretary or a member of the board" at the end of the first sentence.

84-717. (2122.17) **Seal.** The state tax appeal board shall have a seal and such seal shall have the following words engraved thereon. "Tax Appeal Board of the State of Montana." The board shall authenticate all

of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923; amd. Sec. 60, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "tax appeal board" for "board of equalization" in two places.

84-719. (2122.19) **Assessment and apportionment by department of revenue—when made.** The state department of revenue must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by the department, and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by the department.

History: En. Sec. 1, Ch. 180, L. 1925; amd. Sec. 9, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in three places.

84-720. (2122.20) **Transmission of assessment and apportionment to county clerk.** The state department of revenue must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and the department must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed.

History: En. Sec. 2, Ch. 180, L. 1925; amd. Sec. 10, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the beginning and near the end of the section.

84-721. (2122.21) **Entering of state department of revenue's assessment in assessment book.** The county clerk must, on the receipt of each such statement from the state department of revenue, immediately enter on the assessment books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city or town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within

such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

History: En. Sec. 3, Ch. 180, L. 1925; amd. Sec. 11, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-722. (2122.22) **Change of assessment—application—hearing—reassessment.** At any time after the assessment of any property by the state department of revenue, and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person to whom the same is assessed, may make written application to the state department of revenue to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by the department, which application must set forth specifically the grounds and reasons on which such application is based. On receipt of any such application the department must make an order fixing a day for hearing the same, giving the applicant at least ten days notice in writing of the day so fixed for such hearing. And the state department of revenue may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days' written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to exist by the department and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state department of revenue, such department, after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state department of revenue before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the department of revenue must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments, a statement (which) shall be in the same form and contain the same details as the statement required by section 84-720. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment books of the county as shown by such statement, and if any change or correction in such assessment or such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the

assessment books of the county, transmit to such city or town clerk so much of such statement as affects such city or town and such city or town clerk must thereupon make such changes and corrections on the assessment books of such city or town.

History: En. Sec. 4, Ch. 180, L. 1925; amd. Sec. 12, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-723. (2122.23) **Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue.** The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state department of revenue, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state department of revenue; such collections to be turned over to the state treasurer on the 10th and 25th day of each and every month, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state department of revenue.

History: En. Sec. 1, Ch. 79, L. 1927; amd. Sec. 13, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places; and made a minor change in phraseology.

84-724. Destruction of tax records authorized—procedure. Notwithstanding the provisions of any other chapter of this code, the state department of revenue is authorized to destroy tax records more than three (3) years old, as shall be determined to be of no further value.

Authorization for destruction of tax records shall be by the director of revenue or authorized employees of the department of revenue. A copy of the authorization and authenticated list shall be maintained by the department of revenue.

History: En. Sec. 1, Ch. 187, L. 1963; amd. Sec. 1, Ch. 9, L. 1969; amd. Sec. 61, Ch. 405, L. 1973.

Amendments

The 1969 amendment substituted "three (3) years old" for "five (5) years old" after "tax record more than" in the first paragraph.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph; substituted "the director of revenue or authorized employees of the department of revenue" for "unanimous vote of the members of the state board of equalization entered upon on authenticated list of records authorized to be destroyed" at the end of the first sentence in the second paragraph; and substituted "maintained by the department of revenue" for "entered in the minutes of the board by its secretary" at the end of the second sentence in the second paragraph.

Effective Date

Section 2 of Ch. 9, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved January 29, 1969.

84-725. Suspense account for receipts and refunds. The state department of revenue shall establish a suspense account in the state treasury for the purpose of conveniently processing receipts and for paying refunds for overpayments of inheritance taxes collected by county treasurers and all other taxes collected by the department. All moneys received by the department shall be temporarily credited by the state treasurer to the department's suspense account. Each month the department shall send to the treasurer and to the controller a distribution sheet designating the amount to be deposited in each treasury fund and in each account.

History: En. Sec. 1, Ch. 126, L. 1963; amd. Sec. 14, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-726. Refund of overpayments—time of filing claims for refund—procedure. (1) When there has been an overpayment of the inheritance tax collected by county treasurers or any other tax collected by the state department of revenue, and there is no law providing for a refund, the department shall refund the amount of the overpayment to the taxpayer, plus any interest and penalty due the taxpayer, as provided in subsection (2) of this section.

(2) No refund or payment shall be allowed unless a claim is filed by the taxpayer before the expiration of five (5) years from the time the tax was paid. Within six (6) months after the claim is filed the state department of revenue shall examine the claim and either approve or disapprove it. If the claim is approved the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the taxpayer and shall grant a hearing on the claim. If the department disapproves a claim after holding a hearing, the determination of the department may be reviewed as provided by section 84-4923.1.

History: En. Sec. 2, Ch. 126, L. 1963; amd. Sec. 15, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-727. Assessment of proportionally registered interstate motor vehicle fleets—full or partial year—tax payment required for registration. The state department of revenue shall assess, for the purpose of personal property taxes, interstate motor vehicle fleets proportionally registered under the provisions of sections 53-701 to 53-724, and said assessment shall be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by section 53-712. Interstate motor vehicle fleets are hereby declared assessable for taxation purposes upon application for proportional registration and shall be assessed to the persons who own or claim, or in whose possession or control the fleet is at the time of the application. Any fleet contained in an original application which has a situs for purpose of property taxation in Montana by the terms of this act or any other provision of the laws of Montana between January 1st and April 1st shall be taxed for a full year. Any fleet contained in an original application

which acquires a situs for the purpose of property taxation in Montana under the provisions of this act or any other law of the state of Montana after April 1st shall have taxes apportioned as provided in section 84-6011. Any fleet, contained in a renewal application, shall be assessed and taxed for a full year. Vehicles contained in a fleet for which current taxes have been assessed and paid shall not be assessed under this section upon presentation to the department of revenue of proof of payment of tax for the current registration year. The payment of personal property taxes are a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

History: En. Sec. 1, Ch. 89, L. 1965; amd. Sec. 16, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first and sixth sentences.

84-728. Valuation of interstate fleets—determination of aggregate tax due. The state department of revenue shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(a) The purchase price depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(b) to (d). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 89, L. 1965; amd. Sec. 17, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and in subdivision (a).

84-729. Determination of average levy in state—application to interstate fleets—cost stated in application for registration. The state department of revenue shall determine the aggregate tax in the entire state for: (1) state, (2) county, (3) local purposes, levied on the general property of the state in the previous year excluding special levies on property for local improvements and special state levies on livestock for bounties, inspection and protection purposes.

From the total taxable valuation of the general property of the state including net proceeds and the aggregate tax as determined, the state department of revenue shall compute the average levy by dividing the aggregate tax by the total state taxable valuation. The rate so determined shall constitute the rate of taxation on the taxable value of all interstate trucks.

The original cost of each vehicle shall be included on the application for proportional registration under the provisions of sections 53-701 to 53-724. The department shall determine the original cost when the owner does not have this information on new or used vehicles, or in the case of rebuilt vehicles.

History: En. Sec. 3, Ch. 89, L. 1965; amd. Sec. 18, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in each of the three paragraphs.

84-730. Situs in state of proportionally registered fleets—collection of property tax. For the purposes of this section, all vehicles previously

registered or which registration has been applied for, under the provisions of sections 53-701 to 53-724, are hereby declared to have a situs in the state for the purposes of taxation.

The department or its designated agent shall collect the personal property taxes prescribed herein.

History: En. Sec. 4, Ch. 89, L. 1965; amd. Sec. 19, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the second paragraph.

84-732. Certified copies of corporation license and income tax returns furnished to taxpayer—fee. Certified copies of returns filed for corporation license tax under section 84-1504, and certified copies of returns filed for income tax under section 84-4919, may be furnished by the department of revenue to the taxpayer or his duly authorized representative upon payment of fifty cents (50¢) for each page.

History: En. Sec. 1, Ch. 187, L. 1965; amd. Sec. 20, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-733. Corporation license tax clearance certificates furnished—fee. Upon request of a corporation and upon the payment of one dollar ($1) the department of revenue may furnish to it a certificate to the effect that all taxes have been paid, that a return has been filed and that all information has been supplied as required by the provisions of the Corporation License Tax Act.

History: En. Sec. 2, Ch. 187, L. 1965; amd. Sec. 21, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-734. Fees to reimburse department for costs—deposit in general fund. All moneys collected under this act shall be required to reimburse the state department of revenue for costs involved in the preparation of the copies and certificates. All such moneys collected shall go into the general fund of the state of Montana.

History: En. Sec. 3, Ch. 187, L. 1965; amd. Sec. 22, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 8—RAILROADS OPERATING IN MORE THAN ONE COUNTY—ASSESSMENT FRANCHISE, ETC. BY STATE DEPARTMENT OF REVENUE

Section

84-801. Assessment of railroads.
84-802. Assessment, how made.
84-802.1. Hearing before the state tax appeal board.
84-803. Duties of the state department of revenue respecting statement.
84-804. Record of assessment and apportionment of railroads.

84-801. (2131) **Assessment of railroads.** The president, secretary, or managing agent, or such other officer as the state department of revenue

may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the department a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1) to (10). * * * [Same as parent volume.]

(11). A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state department of revenue upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12). * * * [Same as parent volume.]

(13). Any other facts the state department of revenue may require.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 43, p. 87, L. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1925; amd. Sec. 23, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3664

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and subdivisions (11) and (13); and made a minor change in style.

84-802. (2132) **Assessment, how made.** The state department of revenue must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right of way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by an agent of the state department of revenue in the county wherein they are situate. After making such assessment, the department shall give written notice thereof to such owner or operator. Within ten (10) days the owner or operator, or any taxpayer, may appear at the department of revenue in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the department shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivision, in which such railroad is located.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1939; amd. Sec. 62(a), Ch. 405, L. 1973. Cal. Pol. C. Sec. 3665.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state department of equalization; deleted "but franchises derived from the United States must not be assessed" from the end of the first sentence; substituted "an agent of the state department of revenue in" for "the assessor of" near the end of the fourth sentence; deleted "at least ten (10) days" before "written notice" in the fifth sentence; deleted "designating therein a time and place for hearing thereon, at which time and place" from the end of the present fifth sentence; divided the former fifth sentence into the fifth and sixth sentences; and inserted "Within ten (10) days" at the beginning of the sixth sentence.

84-802.1. Hearing before the state tax appeal board. Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

History: En. 84-802.1 by Sec. 62(b), Ch. 405, L. 1973.

84-803. (2133) **Duties of the state department of revenue respecting statement.** The state department of revenue must, within the time mentioned, in the preceding section, transmit by mail to the agent of the department in each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same, as fixed by a prorata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The agent of the department of revenue in each county must enter the statement on the assessment roll of the county.

History: En. Sec. 45, p. 90, L. 1891; re-en. Sec. 3739, Pol. C. 1895; re-en. Sec. 2558, Rev. C. 1907; re-en. Sec. 2133, R. C. M. 1921; amd. Sec. 2, Ch. 13, L. 1939; amd. Sec. 63, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3665.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

84-804. (2136) **Record of assessment and apportionment of railroads.** The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 48, p. 92, L. 1891; re-en. Sec. 3742, Pol. C. 1895; re-en. Sec. 2561, Rev. C. 1907; re-en. Sec. 2136, R. C. M. 1921; amd. Sec. 3, Ch. 13, L. 1939; amd. Sec. 24, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3666.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 9—TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES—ASSESSMENT BY STATE DEPARTMENT OF REVENUE

Section

84-901. Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue.

84-902. Statement to be transmitted by agent of the department of revenue to the state department of revenue.

84-903. Appearance at department of revenue.
84-903.1. Hearing before the state tax appeal board.
84-904. Hearing for the determination of facts pertaining to assessment.
84-905. Assessment of property—apportionment to counties.
84-906. Transmission of statement of amount apportioned to counties.
84-907. Record of assessment and apportionment of properties.

84-901. (2138) **Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state department of revenue.** The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state department of revenue a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1 to 3. * * * [Same as parent volume.]

4. Such other information regarding such property as may be required by the state department of revenue.

History: En. Sec. 1, Ch. 49, L. 1919; re-en. Sec. 2138, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1939; amd. Sec. 25, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and in subdivision 4.

84-902. (2139) **Statement to be transmitted by agent of the department of revenue to the state department of revenue.** The agent of the department in every county must, on the first Monday in May of each year, transmit to the state department of revenue a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other similar property in more than one county of the state, whose property, or any part thereof, has been assessed by the agent of the department.

2. * * * [Same as parent volume.]

3. After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 2, Ch. 49, L. 1919; re-en. Sec. 2139, R. C. M. 1921; amd. Sec. 2, Ch. 17, L. 1939; amd. Sec. 64, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the agent of the department of revenue for references to the county assessor; substituted references to the state department of revenue for references to the state board of equalization; and added subdivision 3.

84-903. (2141) **Appearance at department of revenue.** After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made. Within ten (10) days the person or persons, or any taxpayer may appear at the department of reve-

nue in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 4, Ch. 49, L. 1919; re-en. Sec. 2141, R. C. M. 1921; amd. Sec. 5, Ch. 17, L. 1939; amd. Sec. 65(a), Ch. 405, L. 1973.

Amendments

The 1973 amendment divided the section into two sentences; substituted references to the department of revenue for references to the state board of equalization; deleted "at least ten (10) days'" before "written notice" in the first sentence; deleted "designating a time and place for hearing thereon, at which time and place" from the end of the first sentence; and inserted "Within ten (10) days" at the beginning of the second sentence.

84-903.1. Hearing before the state tax appeal board. Following the assessment by the department, any aggrieved party may appeal to the state tax appeal board according to the rules and regulations of said board.

History: En. 84-903.1 by Sec. 65(b), Ch. 405, L. 1973.

84-904. (2142) **Hearing for the determination of facts pertaining to assessment.** If any corporation, person or association shall fail, neglect, or refuse to furnish the state department of revenue with a full, true, and correct statement as required, and within the time, by section 84-901, or if the department shall have reason to believe that any such statement furnished the department is incorrect or erroneous in any particular, the department shall order a hearing for the purpose of ascertaining and determining such facts as will enable the department to assess the property of such corporation, person or association in accordance with the provisions of section 84-905. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the department shall ascertain and determine each and all of the matters and facts which should have been stated in such statement.

History: En. Sec. 5, Ch. 49, L. 1919; re-en. Sec. 2142, R. C. M. 1921; amd. Sec. 3, Ch. 17, L. 1939; amd. Sec. 26, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the board of equalization.

84-905. (2143) **Assessment of property—apportionment to counties.** The department must assess all the properties described in section 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the department shall deem proper.

On or before the second Monday in July, the department shall apportion such assessment to the counties in which the properties are situated.

History: En. Sec. 6, Ch. 49, L. 1919; re-en. Sec. 2143, R. C. M. 1921; amd. Sec. 4, Ch. 17, L. 1939; amd. Sec. 27, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-906. (2144) **Transmission of statement of amount apportioned to counties.** The state department of revenue, must, not later than the second Monday of July, transmit or mail to the agent of the department in each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same suffi-

cient for identification; the assessed value of the same as determined by the department; and the amount apportioned to the county. The agent of the department must enter the statement on the assessment roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county.

History: En. Sec. 7, Ch. 49, L. 1919; re-en. Sec. 2144, R. C. M. 1921; amd. Sec. 6, Ch. 17, L. 1939; amd. Sec. 66, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and substituted references to the agent of the department of revenue for references to the county assessor.

84-907. (2146) **Record of assessment and apportionment of properties.** The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 9, Ch. 49, L. 1919; re-en. Sec. 2146, R. C. M. 1921; amd. Sec. 7, Ch. 17, L. 1939; amd. Sec. 28, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 10—LICENSE TAXES—CARBON BLACK PRODUCERS

(Repealed—Section 1, Chapter 370, Laws of 1973)

84-1001 to 84-1010. (2380.1 to 2380.10) **Repealed.**

Repeal

Sections 84-1001 to 84-1010 (Secs. 1 to 10, Ch. 97, L. 1929), relating to a tax on production of carbon black, were repealed by Sec. 1, Ch. 370, Laws of 1973. Chapter 516, Laws of 1973, purported to amend secs. 84-1004 to 84-1006 and 84-1008. However, the amendments were void under the rule of sec. 43-515.

CHAPTER 11—LICENSE TAXES—CEMENT DEALERS

Section
84-1103. Statement to be filed with state department of revenue.
84-1105. Record of cement received.
84-1106. Quarterly statement of produce sold on which no tax paid—payment of tax.
84-1108. Procedure to ascertain tax on failure of statement—penalty.

84-1102. (2368) **License tax on sales of cement, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-1103. (2369) **Statement to be filed with state department of revenue.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this

state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R. C. M. 1921; amd. Sec. 33, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-1105. (2371) **Record of cement received.** Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other byproducts of cement purchased or received by or delievered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other byproducts of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L. 1921; re-en. Sec. 2371, R. C. M. 1921; amd. Sec. 34, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-1106. (2372) **Quarterly statement of produce sold on which no tax paid—payment of tax.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 16, Ex. L. 1921; re-en. Sec. 2372, R. C. M. 1921; amd. Sec. 35, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence and at the end of the last sentence.

84-1108. (2374) **Procedure to ascertain tax on failure of statement—penalty.** If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-five per cent thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent per annum, from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 16, Ex. L. 1921; re-en. Sec. 2374, R. C. M. 1921; amd. Sec. 36, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the first sentence.

CHAPTER 12—LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

Section
84-1202. License tax on producers and importers of gypsum and cement.
84-1204. Quarterly payment of tax.
84-1205. Statements to be filed with department of revenue.
84-1206. Manufacturers to keep records.
84-1207. Quarterly statement and payment of tax.
84-1209. Procedure to ascertain tax on failure of statement—penalty.

84-1202. (2357) **License tax on producers and importers of gypsum and cement.** Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, and any person who imports into this state any such products for sale or use, must, for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state department of revenue for the use of the state of Montana, a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

1 to 3. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R. C. M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; amd. Sec. 1, Ch. 192, L. 1945; amd. Sec. 37, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1204. (2358) **Quarterly payment of tax.** Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1945; amd. Sec. 38, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1205. (2359) **Statements to be filed with department of revenue.** Each and every person engaged in or carrying on the business specified in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the name and addresses of its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L. 1921; re-en. Sec. 2359, R. C. M. 1921; amd. Sec. 4, Ch. 192, L. 1945; amd. Sec. 39, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1206. (2360) **Manufacturers to keep records.** Every such person shall keep a record in such form as the state department of revenue may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L. 1921; re-en. Sec. 2360, R. C. M. 1921; amd. Sec. 5, Ch. 192, L. 1945; amd. Sec. 40, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the section.

84-1207. (2361) **Quarterly statement and payment of tax.** Each and every person must, within thirty days after the quarter ending March 31,

1945, and within thirty days after the end of each following quarter, make out, on forms prescribed by the state department of revenue, and deliver to the state department of revenue, a statement showing the total number of barrels or tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in section 84-1202 or imported by such person into the state of Montana for sale or use, during each month of such quarter and during the whole quarter, and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 15, Ex. L. 1921; re-en. Sec. 2361, R. C. M. 1921; amd. Sec. 6, Ch. 192, L. 1945; amd. Sec. 41, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

84-1209. (2363) **Procedure to ascertain tax on failure of statement—penalty.** If any such person shall fail, neglect or refuse to file any statement required by section 84-1207 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the amounts of the respective articles or products enumerated in section 84-1202 manufactured or produced by such person within this state or imported by such person into the state, during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state department of revenue, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 8, Ch. 15, Ex. L. 1921; re-en. Sec. 2363, R. C. M. 1921; amd. Sec. 8, Ch. 192, L. 1945; amd. Sec. 42, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 13—LICENSE TAXES—COAL MINES

Section
84-1302. Strip coal mines license tax—amount—exemptions—testing of samples.
84-1303. Payment of annual license tax.
84-1304. Strip coal mine operators to file statements.
84-1305. Records to be kept by mine operators.
84-1306. Quarterly statements of mine operators—payment of license tax.
84-1308. Procedure to determine tax—penalty—tax lien.
84-1309.1. Disposal of license taxes.

84-1302. (2317) **Strip coal mines license tax—amount—exemptions—testing of samples.** (1) A person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating a strip coal mine or strip coal mining property from which marketable or merchantable coal is extracted or produced by means of strip mining, whether the person carries on the business or engages in the work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on the business, work or operations, pay to the state treasurer, for the use and benefit of the state of Montana, a license tax for engaging in and carrying on the business, work and operations, in the amounts listed in subsection (2) on marketable or merchantable coal extracted or produced by means of strip mining by a person in the state of Montana and shipped by him during a year, or used by him for any purpose except in connection with the operating of the strip coal mine or mining property from which the coal was extracted or produced by means of strip mining or delivered by him to another person for shipment, sale, or use by the other person; provided, however, that nothing in this act requires laborers or employees, hired or employed, by a person to mine coal, or to work in or about, or in connection with a strip coal mine to pay license taxes, nor is work required to be done in prospecting for, or in developing, or in opening up a strip coal mine or strip coal mining property, considered to be the carrying on of a strip coal mining business, or the engaging in the business of working or operating of a strip coal mine; provided, further, that if during the work of developing or opening up a strip coal mine or strip coal mining property, marketable or merchantable coal is extracted or produced by means of strip mining and sold, then this is considered the carrying on of a strip coal mining business and the engaging in the business of working and operating a strip coal mine.

(2) The license tax paid under subsection (1) of this act is computed as follows:

(a) For each ton of coal having a British thermal unit (BTU) rating per pound of seven thousand (7,000) or less, twelve cents ($.12) per ton.

(b) For each ton of coal having a BTU rating of seven thousand one (7,001) to eight thousand (8,000), twenty-two cents ($.22) per ton.

(c) For each ton of coal having a BTU rating of eight thousand one (8,001) to nine thousand (9,000), thirty-four cents ($.34) per ton.

(d) For each ton of coal having a BTU rating of nine thousand one (9,001) and up, forty cents ($.40) per ton.

(3) The person paying such license tax shall be entitled to exempt annually from said license tax a total of five thousand (5,000) tons of

coal, and such exemption may be applied all to one British thermal unit rating, or may be spread among the several ratings, but the total exemption may not exceed, in any case, five thousand (5,000) tons in any one year.

(4) The Montana state bureau of mines and geology (hereafter bureau) is designated as the testing agency for purposes of this act and is granted the right to promulgate rules and regulations to provide testing data required by this act. The rules and regulations promulgated under this act shall be structured to mutually protect the interest of the persons subject to the provisions of this act and the state of Montana.

(5) A person subject to the provisions of this act shall on or before the first day of August of each calendar year submit to the bureau a sample of mine run "as is" coal from their coal production area. Additional sampling shall be required of the persons subject to this act at the request of the bureau.

(6) The bureau shall provide a form showing the results of the testing provided for under this act to the persons subject to this tax and the department of revenue prior to the first of September of each calendar year.

History: En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939; amd. Sec. 1, Ch. 244, L. 1967; amd. Sec. 1, Ch. 355, L. 1971; amd. Sec. 1, Ch. 432, L. 1973; amd. Sec. 43, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 432 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section, embodying the changes made by both amendments.

Amendments

The 1967 amendment inserted "strip" before "coal" in ten places; inserted "strip coal" before "mine" or "mining" in four places; deleted "mined" before "extracted" in four places; inserted "by means of strip mining" after "produced" in four places; and deleted "or coal property or business" before "to pay such license taxes."

The 1971 amendment designated the former section as subsection (1); substituted "the amounts listed in subsection (2) and subject to the exemption provided in subsection (3) on" for "an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of" near the middle of subsection (1); and added subsections (2), (3), (4), (5), and (6).

Chapter 432, Laws of 1973, deleted "and subject to the exemption provided in subsection (3)" after "in the amounts listed in subsection (2)" in the middle of subsection (1); inserted letter designations before the clauses in subsection (2); and increased the tax from 4¢ to 12¢ per ton for coal with a BTU rating of 6,000 or less, from 6¢ to 12¢ with a rating of 6,001 to 7,000, from 6¢ to 22¢ with a rating of 7,001 to 7,500, from 8¢ to 22¢ with a rating of 7,501 to 8,000, from 8¢ to 34¢ with a rating of 8,001 to 9,000, and from 10¢ to 40¢ with a rating of more than 9,000 BTU.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsection (6).

Cross-References

Multistate tax compact, sec. 84-6701.

84-1303. (2318) **Payment of annual license tax.** Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter.

History: En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921; amd. Sec. 5, Ch. 245, L. 1967; amd. Sec. 2, Ch. 355, L. 1971; amd. Sec. 3, Ch. 432, L. 1973.

Amendments

The 1967 amendment added a proviso granting a tax credit for reclamation work performed by a licensee and reported to the bureau of mines and geology.

The 1971 amendment inserted a word limiting the tax credit granted by the 1967 amendment to on-site work; and added a second proviso limiting the credit to one cent per ton of coal removed.

The 1973 amendment deleted the provisos added by the 1967 and 1971 amendments.

Separability Clause

Section 4 of Ch. 432, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

84-1304. (2319) **Strip coal mine operators to file statements.** Each and every person engaged in or carrying on the business of strip coal mining, or engaged in the business of working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining at th date when this act becomes effective, must, not later than the thirtiet day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of strip coal mining or engage in working or operating any strip coal mine or strip coal mining property in the state of Montana, from which coal of any kind is extracted or produced by means of strip mining must, immediately upon engaging in such business, work or operations, file with the state department of revenue, a certificate and statement, on forms prescribed by such state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the strip coal mine or strip coal mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921; amd. Sec. 2, Ch. 244, L. 1967; amd. Sec. 44, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted "strip coal" before "mine" or "mining" in seven places; inserted "strip" before "coal" in two places; and substituted "extracted or produced by means of strip mining" for "mined" after "any kind is" in two places.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section; and substituted "department" for "board" near the end.

84-1305. (2320) **Records to be kept by mine operators.** Every such person shall keep a record, in such form as the state department of revenue may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents and employees.

History: En. Sec. 5, Ch. 155, L. 1921; re-en. Sec. 2320, R. C. M. 1921; amd. Sec. 45, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the section.

84-1306. (2321) **Quarterly statements of mine operators—payment of license tax.** Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 155, L. 1921; re-en. Sec. 2321, R. C. M. 1921; amd. Sec. 46, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence and at the end of the last sentence.

84-1308. (2323) **Procedure to determine tax—penalty—tax lien.** If any person shall fail, neglect or refuse to file any statement required by section 84-1306, or shall fail to make payment of such license tax within the time therein required, the state department of revenue, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state

treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any couny attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state department of revenue and such lien may be enforced in the name of the state Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 8, Ch. 155, L. 1921; re-en. Sec. 2323, R. C. M. 1921; amd. Sec. 1, Ch. 74, L. 1931; amd. Sec. 2, Ch. 200, L. 1939; amd. Sec. 47, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "state board of equalization" near the beginning and end of the first sentence of the first paragraph, and near the end of the second paragraph.

84-1309.1. Disposal of license taxes. License taxes collected under the provisions of this chapter are allocated as follows:

(1) To the county general fund from which coal was mined one cent (1¢) per ton.

(2) All other revenues from license taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973.

Title of Act

An act amending sections 84-1302 and 84-1303, R. C. M. 1947, to change the basis for determining and raising the strip coal mines license tax and removing the reclamation credit; providing distribution for a portion of the strip coal mines license tax to the counties; and providing for a severability clause.

CHAPTER 14—LICENSE TAXES—COAL RETAILERS

Section
84-1403. Retailers to file statements—contents.
84-1405. Record of coal sold for retail.
84-1406. Statement of coal sold—form and filing.
84-1408. Procedure to determine tax on failure to file statement—penalty.
84-1412. Revocation of license.

84-1402. (2328) **License to retail coal—fees.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-1403. (2329) **Retailers to file statements—contents.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state department of

revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or copartnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state department of revenue may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921; re-en. Sec. 2329, R. C. M. 1921; amd. Sec. 48, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice near the middle of the section and near the end of the section.

84-1405. (2331) **Record of coal sold for retail.** Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its members, agents, or employees.

History: En. Sec. 5, Ch. 5, Ex. L. 1921; re-en. Sec. 2331, R. C. M. 1921; amd. Sec. 49, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1406. (2332) **Statement of coal sold—form and filing.** Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state department of revenue.

History: En. Sec. 6, Ch. 3, Ex. L. 1921; re-en. Sec. 2332, R. C. M. 1921; amd. Sec. 50, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the first sentence and at the end of the last sentence.

84-1408. (2334) **Procedure to determine tax on failure to file statement —penalty.** If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the department of revenue until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; re-en. Sec. 2334, R. C. M. 1921; amd. Sec. 2, Ch. 74, L. 1931; amd. Sec. 51, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "state board of equalization" near the beginning and end of the first sentence.

84-1412. (2338) **Revocation of license.** The state department of revenue shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state department of revenue so to do shall have been given to such person and such person afforded an opportunity to appear before such state department of revenue and show cause why such license should not be revoked.

History: En. Sec. 12, Ch. 3, Ex. L. 1921; re-en. Sec. 2338, R. C. M. 1921; amd. Sec. 52, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 15—LICENSE TAXES—CORPORATION LICENSE TAX

Section
84-1501. Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.
84-1501.2. Election by small business corporation.
84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected.
84-1501.6. State and national banks subject to tax.
84-1501.7. Effective dates.
84-1502. Deductions allowed in computing income.
84-1503. Segregation of income within and without state.
84-1504. Computation of license tax—return of net income to be filed—definitions.

84-1505. Assessment and collection of tax.
84-1505.1. Release of tax liens.
84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection.
84-1507. Returns and corrections to be public records.
84-1508. Regulations—attendance of witnesses—arbitrary assignment of net income.
84-1508.1. Determination of tax liability—interest on deficiences and overpayments.
84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver.
84-1509. Consolidated returns—computation and procedure on.
84-1512. Where omission deemed committed—certificate of department as evidence.
84-1514. Delinquency—suspension—forfeiture—dissolution.
84-1515. Reviver of corporation after suspension or forfeiture.
84-1516. Penalty for violation of act.
84-1517. Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.
84-1518. Reciprocity with federal and other states' revenue officers regarding returns.

84-1501. (2296) **Corporation license tax—organizations exempt therefrom—alternative tax based on gross sales.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth; and every corporation, except as hereinafter provided, and except as provided in section 40-2821 (5), R. C. M. 1947, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of such percentage or percentages of total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana as hereinafter set forth.

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6¾%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars ($50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars ($100,000), may elect to pay a tax of one-half of one

per cent (50%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any—(a) to (k). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937; amd. Sec. 1, Ch. 232, L. 1957; amd. Sec. 1, Ch. 264, L. 1959; amd. Sec. 1, Ch. 155, L. 1961; amd. Sec. 1, Ch. 269, L. 1965; amd. Sec. 1, Ch. 4, Ex. L. 1967; amd. Sec. 1, Ch. 11, Ex. L. 1969; amd. Sec. 1, Ch. 16, L. 1971; amd. Sec. 1, Ch. 333, L. 1971; amd. Sec. 1, Ch. 5, Ex. L. 1971; amd. Sec. 1, Ch. 7, 2nd Ex. L. 1971; amd. Sec. 1, Ch. 468, L. 1973; amd. Sec. 1, Ch. 484, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 468 and once by Ch. 484. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1967 amendment, in the first paragraph, inserted "and except as provided in section 40-2821 (5), R. C. M. 1947" the first place it appears in the second sentence; and, in the second paragraph, increased the percentage of net income to be paid under this section from 5¼% to 5½%, and inserted the second sentence.

The 1969 amendment, in the first sentence of the second paragraph, raised the percentage of net income from "five and one-half per cent (5½%)" to "six and one-quarter per cent (6¼%)"; in the second sentence deleted "all" before "taxable years" and substituted "1969" for "1967"; inserted a third sentence reading: "For taxable years ending on or after February 28, 1971, the percentage of net income to be paid under this act shall be five and one-half per cent (5½%) of all net income for the taxable period."; and raised the minimum tax stated in the fourth sentence from "$10" to "$50."

Chapter 16, Laws of 1971, inserted "and except as provided in section 40-2821(5), R. C. M. 1947" the second place it appears in the second sentence of the first paragraph; and inserted the present third paragraph providing for an alternative corporation license tax.

Chapter 333, Laws of 1971, deleted "ending on or" after "taxable years" in the second sentence of the second paragraph; and deleted the former third sentence inserted in the second paragraph by the 1969 amendment.

Extraordinary Session Chapter 5, Laws of 1971, substituted "all taxable years ending on or after" for "taxable years after" in the second sentence of the second paragraph.

The Second Extraordinary Session, Chapter 7, Laws of 1971, increased the rate specified in the second paragraph from 6¼% to 6¾%; and omitted the third paragraph, which had been inserted by Ch. 16, Laws of 1971.

Chapter 468, Laws of 1973, reinserted the third paragraph, which had been inserted by Chapter 16, Laws of 1971, but omitted by the amendment in the 1971 2nd Extraordinary Session.

Chapter 484, Laws of 1973, inserted the third sentence in the second paragraph.

Effective Dates

Section 2 of Ch. 318, Laws 1967 read: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1967, whether on the calendar or fiscal year basis."

Section 3 of Ch. 318, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Section 2 of Ch. 16, Laws 1971 read "This act shall be effective for taxable years beginning on and after January 1, 1971."

Section 2 of Ch. 333, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 5, Ex. Laws 1971, provides: "The rate set forth in this act shall be effective as to all taxable years ending on or after February 28, 1971, whether on the calendar or fiscal year basis."

Section 3 of Ch. 5, Ex. Laws 1971 provided the act should be in effect from and after its passage and approval. Approved April 6, 1971.

Repealing Clause

Section 2 of Ch. 484, Laws 1973 read "Section 84-1501.8, R. C. M. 1947, is repealed."

Cross-References

Corporation income tax, sec. 84-6901 et seq.

Multistate tax compact, sec. 84-6701.

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.1. Definitions.

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.2. Election by small business corporation. (a) and (b). * * * [Same as parent volume.]

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the department of revenue shall prescribe by regulations.

(2). * * * [Same as parent volume.]

(d). * * * [Same as parent volume.]

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) and (B). * * * [Same as parent volume.]

becomes a shareholder in such corporation and does not consent to such election within such time as the department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(2) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A). * * * [Same as parent volume.]

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state department of revenue shall prescribe by regulations.

(3). * * * [Same as parent volume.]

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which

begins after the first taxable year for which such termination or revocation is effective, unless the state department of revenue consents to such election.

(g). * * * [Same as parent volume.]

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars ($10.00) required by section 84-1501.

History: En. Sec. 2, Ch. 122, L. 1959; amd. Sec. 53, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subdivision (c)(1), in the final paragraph of subdivision (e)(1), in subdivision (e)(2)(B) and in subsection (f); and made a minor change in style.

References

Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.3. Small business option unavailable on dissolution, etc.

Application

This section applies only to shifting of the tax burden under sections 84-1501.1 and 84-1501.2. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1501.4. Repealed.

Repeal

Section 84-1501.4 (Sec. 1, Ch. 316, L. 1967), exempting state banks from the corporation license tax until national banks are taxable, was repealed by Sec. 2, Ch. 23, Laws 1971.

84-1501.5. Minimum fee of corporations qualifying under section 84-1501.2 unaffected. Notwithstanding the provisions of this act, corporations electing and qualifying under section 84-1501.2 shall pay a minimum fee of ten dollars ($10).

History: En. Sec. 2, Ch. 11, Ex. L. 1969.

Effective Date

Section 3 of Ch. 11, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

84-1501.6. State and national banks subject to tax. Effective with taxable years beginning on and after January 1, 1971, every bank organized under the laws of the state of Montana or of any other state and every national bank organized under the laws of the United States are subject to the Montana corporation license tax provided for under Title 84, chapter 15, R. C. M. 1947.

History: En. 84-1501.6 by Sec. 1, Ch. 23, L. 1971.

Title of Act

An act subjecting state and national banks to the Montana corporation license tax; and repealing section 84-1501.4, R. C. M. 1947; and providing effective dates.

Repealing Clause

Section 2 of Ch. 23, Laws 1971 read "Section 84-1501.4, R. C. M. 1947, is repealed."

84-1501.7. Effective dates. For the taxable year beginning on and after January 1, 1971, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 1 (12 U.S.C. 548 (5)). For taxable years beginning on and after January 1, 1972, section 1 [84-1501.6] of this act is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548).

History: En. Sec. 3, Ch. 23, L. 1971.

84-1501.8. Repealed.

Repeal

Section 84-1501.8 (Sec. 2, Ch. 7, 2nd Ex. L. 1971), relating to effective date of the 1971 rate change, and providing a rate reduction if the 1971 referred measure was approved, was repealed by Sec. 2, Ch. 484, Laws 1973.

84-1502. (2297) **Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. * * * [Same as parent volume.]

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1 (c), R. C. M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. * * * [Same as parent volume.]

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following: (a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947; amd. Sec. 1, Ch. 263, L. 1959; amd. Sec. 1, Ch. 235, L. 1971; amd. Sec. 1, Ch. 358, L. 1971; amd. Sec. 1, Ch. 320, L. 1973; amd. Sec. 54, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 320 and once by Ch. 516. Neither amendment mentioned or incorporated the changes made by the other, but the changes made by Ch. 516, the later enactment, appear nugatory in that the phraseology dealt with was eliminated by Ch. 320.

Amendments

Chapter 235, Laws of 1971, inserted the present subdivision 5; and renumbered former subdivisions 5 and 6 as subdivisions 6 and 7.

Chapter 358, Laws of 1971, designated the former subdivision 2 as subdivision 2 (A); added subdivision 2 (B); substituted "or" for "of" after "net income" in subdivision 5(c); and deleted subdivision 7 relating to insurance companies.

Chapter 320, Laws of 1973 inserted "and obsolescence" in the first sentence of subdivision 2(A); substituted "used in the trade or business" for "arising out of its use or employment in the business or trade" in the first sentence of subdivision 2(A); inserted "such allowance to be determined and according to the provisions

of section 167 of the internal revenue code in effect with respect to the taxable year" at the end of the first sentence in subdivision 2(A); inserted the second sentence in subdivision 2(A); inserted "consolidated corporations prior to the date of" in the second paragraph of subdivision 2(B)(d); and substantially rewrote subsection 3, to adopt federal rules and to require the same election as made on the federal return.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" in subsection 3.

Effective Dates

Section 2 of Ch. 235, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 235, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 358, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Section 2 of Ch. 320, Laws 1973 read "This act is effective for taxable years ending on and after December 31, 1972."

DECISIONS UNDER FORMER LAW

Operating Loss

Any net operating loss deduction previously prevented under section 84-1504, including by reference net operating losses allowable under section 172 of the Internal Revenue Code, are eliminated under the new and amended definition of net operating loss contained in this section. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to this section indicates an intention on the part of the legislature to repeal the operating loss deduction under section 84-1504 retroactively. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

84-1503. (2297.1) **Segregation of income within and without state.** If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state department of revenue, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state department of revenue shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The department shall publish not less than once every three (3) years, all rules and regulations and all changes in rules and regulations as they occur pertaining to this section. All decisions by the department under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer may not change from apportionment by formula to separate accounting or vice versa without first obtaining permission from the department.

History: En. Sec. 3, Ch. 166, L. 1933; amd. Sec. 1, Ch. 219, L. 1957; amd. Sec. 1, Ch. 143, L. 1969; amd. Sec. 55, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "not less than once every three (3) years" for "not less than once a year" after "board shall publish" and inserted "and all changes * * * as they occur" in the second sentence; substituted "may not change * * * or vice versa" for "cannot change from one method of accounting to another method of accounting" in the last sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

84-1504. (2299) **Computation of license tax—return of net income to be filed—definitions.** (1) The license fee shall be computed on the basis of the corporation's total net income for the taxable period. The corporation's taxable period shall be its taxable year for federal income tax purposes. In the event a corporation changes its taxable year, it shall promptly notify the state department of revenue.

(2) Every corporation, subject to the license fee imposed under this chapter, shall for each taxable period render a true and accurate return of its net income for the taxable period in the manner and form to be prescribed by the state department of revenue, and containing such facts, data and information as are appropriate and in the opinion of the state department of revenue necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by one (1) of the following: the president, the vice-president, the treasurer, the assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the department of revenue on or before the fifteenth day of May following the close of the calendar year, and if reporting on a fiscal year basis the return shall be filed with the department on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the department of revenue shall prescribe. The department of revenue may grant an additional extension of time for the filing of a return whenever in its judgment good cause exists. The terms "engaged in business" and "doing business" both mean actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. The term gross income means all income recognized in determining the corporation's gross income for federal income tax purposes; but shall include interest exempt from federal income tax. No corporation is exempt from the corporation license tax unless specifically provided for under section 84-1501. Any corporation not subject to or liable for federal income tax but not exempt from the corporation license tax under section 84-1501 shall compute gross income for corporation license tax purposes in the same manner as a corporation that is subject to or liable for federal income tax according to the provisions for determining gross income in the federal internal revenue code in effect for the taxable year. The term "net income" means the gross income of the corporation less the deductions set forth in section 84-1502.

(3). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947; amd. Sec. 1, Ch. 235, L. 1961; amd. Sec. 3, Ch. 186, L. 1963; amd. Sec. 1, Ch. 372, L. 1973; amd. Sec. 56, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 372 and once by Ch. 516. Neither amendatory act mentioned the other. Since the changes made by Ch. 372 include the changes made by Ch. 516, the compiler has used the text of Ch. 372 above.

Amendments

Chapter 372, Laws of 1973, rewrote subsection (1), for prior version of which see

parent volume; substituted "taxable period" for "year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof" near the beginning of the first sentence in subsection (2); substituted "net income for the taxable period" for "annual net income" in the first sentence of subsection (2); substituted "department of revenue" for "board of equalization" and "department" for "board" throughout subsection (2); substituted the requirement for signature by one of the enumerated officers for a requirement of signature by both a principal officer and a financial officer; substituted "following the close of the calendar year" for "in each year" following "fifteenth day of May" in the third sentence of subsection (2); inserted the seventh sentence in subsection (2); substituted "all income recognized in determining the corporation's gross income for federal income tax purposes" for "the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability" in the eighth sentence in subsection (2); inserted the ninth sentence in subsection (2); inserted "set forth in section 84-1502" at the end of the last sentence in subsection (2); and deleted from the end of subsection (2) two sentences disclaiming intent to allow certain federal deductions and also defining "fiscal year."

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" near the end of subsection (1) and throughout subsection (2).

Effective Date

Section 2 of Ch. 372, Laws 1973 read "This act shall apply to taxable years beginning on and after January 1, 1973."

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate licensed tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

DECISIONS UNDER FORMER LAW

Operating Loss Deduction

With the exception of the exempt interest exclusion and dividend deduction contained in the Federal Internal Revenue Code, the legislature left intact the interrelation of state corporation licensed gross and net income and federal income tax gross and net income as provided in the Federal Internal Revenue Code; the net operating loss deduction in section 172 of the Federal Internal Revenue Code was allowable in computing a state corporation tax liability. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

Nothing in the 1971 amendment to section 84-1502 indicated an intention on the part of the legislature to repeal this section's operating loss deduction retroactively. Lazy JD Cattle Co. v. State Board of Equalization, — M —, 504 P 2d 287.

84-1505. (2300) **Assessment and collection of tax.** (1) Assessment and payment of tax, penalty and interest. All taxpayers shall compute the amount of tax payable under this act and shall remit such amount to the state department of revenue on or before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid on or before the due date, there shall be assessed a penalty of ten per cent (10%) of the amount of the tax, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any tax due under this chapter is not paid when due, by reason of extension granted, or otherwise, interest shall be added thereto at the rate of nine per cent (9%) per annum from the due date until paid.

(2) Levy upon and sale of property for payment of corporation licenses taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the corporation owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and

the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the corporation against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

(3) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945; amd. Sec. 1, Ch. 102, L. 1961; amd. Sec. 4, Ch. 186, L. 1963; amd. Sec. 1, Ch. 324, L. 1969; amd. Sec. 67, Ch. 405, L. 1973.

Amendments

The 1969 amendment raised the interest rate on unpaid taxes from "six per cent (6%)" to "nine per cent (9%)" per annum.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Date

Section 2 of Ch. 324, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

84-1505.1. Release of tax liens. (1) The state department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof has been fully satisfied. The state department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The state department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under Title 84, chapter 15, R. C. M. 1947, if:

(a) It finds that the fair market value of that part of the property remaining subject to the lien is at least double the value of the unsatisfied liability secured by such lien and the amount of all other liens upon the property which may have priority to such lien;

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the state department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The state department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 53, L. 1967; amd. Sec. 57, Ch. 516, L. 1973.

Title of Act

An act to permit release of lien and discharge of property from force of lien imposed with respect to corporation license tax liability.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in subsection (1); near the beginning of subsection (2); and in subdivisions (2)(b) and (2)(c).

84-1505.2. Immediate payment of tax or deficiency due may be required if delay would jeopardize collection. If the state department of revenue finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.

History: En. Sec. 1, Ch. 246, L. 1969; amd. Sec. 58, Ch. 516, L. 1973.

Title of Act

An act which empowers the state board of equalization to require immediate payment of a tax or deficiency due under any corporation license tax statute of Montana if the board finds that the collection of the tax or deficiency will be jeopardized in whole or in part by delay.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-1507. (2302) **Returns and corrections to be public records.** When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state department of revenue, shall be filed in the office of said department, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state department of revenue.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R. C. M. 1921; amd. Sec. 3, Ch. 146, L. 1923; amd. Sec. 59, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1508. (2303) **Regulations—attendance of witnesses—arbitrary assignment of net income.** The state department of revenue shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state department of revenue, together with the production of books and such other testimony by appropriate process. When the state department of revenue has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining the same, the department shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933; amd. Sec. 5, Ch. 186, L. 1963; amd. Sec. 60, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-1508.1. Determination of tax liability—interest on deficiencies and overpayments. (a) Deficiency assessments. If, the state department of revenue determines that the amount of tax due is greater than the amount disclosed by the return, it shall mail to the taxpayer a notice of the additional tax proposed to be assessed. Within thirty (30) days after the mailing of the notice, the taxpayer may file with the state department of revenue a written protest against the proposed additional tax, setting forth the grounds upon which the protest is based, and may request in its protest an oral hearing or an opportunity to present additional evidence relating to its tax liability. If no protest is filed, the amount of the additional tax proposed to be assessed becomes final upon the expiration of the thirty (30) day period. If such protest is filed, the state department of revenue shall reconsider the proposed assessment, and if the taxpayer has so requested, shall grant the taxpayer an oral hearing. After consideration of the protest and the evidence presented in the event of an oral hearing, the state department of revenue's action upon the protest is final when it mails notice of its action to the taxpayer.

When a deficiency is determined and the tax becomes final, the state department of revenue shall mail notice and demand to the taxpayer for the payment thereof, and the tax shall be due and payable at the expiration of ten (10) days from the date of such notice and demand. Interest on any deficiency assessment shall bear interest from the date specified in section 84-1505 for payment of the tax. A certificate by the state department of revenue of the mailing of the notices specified in

this subsection shall be prima facie evidence of the computation and levy of the deficiency in tax and of the giving of the notices.

(b) Overpayment of tax—refunds and credits. If the state department of revenue determines that the amount of tax, penalty or interest due for any year is less than the amount paid, the amount of the overpayment shall be credited against any tax, penalty or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

If the state department of revenue disallows any claim for refund, it shall notify the taxpayer accordingly. At the expiration of thirty (30) days from the mailing of the notice, the state department of revenue's action shall become final, unless within the said thirty (30) day period the taxpayer appeals in writing from the action of said department to the state tax appeal board. If such appeal is made, the state tax appeal board shall grant the taxpayer an oral hearing. After consideration of the appeal and evidence presented, the state tax appeal board shall forthwith mail notice to the taxpayer of its determination. The board's determination is final when it mails notice of its action to the taxpayer.

(c) Except as hereinafter provided for, interest shall be allowed on overpayments at the rate of six per cent (6%) per annum from the due date of the return or from the date of overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. Interest shall not accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (1) if the overpayment is refunded within six (6) months from the date the return is due or from the date the return is filed, whichever is later; or (2) if the amount of interest is less than one dollar ($1.00).

A payment not made incident to a bona fide and orderly discharge of an actual corporation license tax liability or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 186, L. 1963; amd. Sec. 68, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization, except that in the second paragraph of subsection (b), it substituted references to the state tax appeal board for references to the state board of equalization; deleted "shall reconsider its action, and if the taxpaper has so requested" following "If such appeal is made, the state tax appeal board" in the third sentence of the second paragraph of subsection (b) and deleted "in the event of an oral hearing" following "appeal and evidence presented" in the fourth sentence of the second paragraph of subsection (b).

84-1508.2. Periods of limitation—limitations for notification of additional tax extended if taxpayer fails to report change in federal tax—waiver. (1) Except as otherwise provided in this section and in section 84-1513, R. C. M. 1947, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional

tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For the purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R. C. M. 1947, until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer files a claim therefor or the state department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state department of revenue may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended.

History: En. Sec. 2, Ch. 186, L. 1963; amd. Sec. 1, Ch. 142, L. 1969; amd. Sec. 61, Ch. 516, L. 1973.

Amendments

The 1969 amendment, in the first sentence of subsection (1), substituted "in this section and * * * R. C. M. 1947" for "in section 84-1513"; substituted "such last day" for "that day" at the end of the second sentence and added the last sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in subsection (2).

84-1509. (2303.1) **Consolidated returns—computation and procedure on.** (1) Corporations which are affiliated may not file a consolidated return unless at least eighty per cent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a unitary business and permission to file a consolidated return is given by the state department of revenue. For purposes of this section, a "unitary business operation" means one in which the business operations conducted by the corporations in the affiliated group are interrelated or interdependent to the extent that the net income of one corporation cannot reasonably be determined without reference to the operations conducted by the other corporations.

(3) If the conditions of subsections (1) and (2) of this section are met, the state department of revenue may require corporations to file a consolidated return when the department considers a consolidated return necessary.

(4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, at least eighty per cent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income[,] such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state department of revenue may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state department of revenue that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state department of revenue is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

History: En. Sec. 5, Ch. 166, L. 1933; amd. Sec. 1, Ch. 243, L. 1969; amd. Sec. 62, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted subsections (1) to (3) for former subsection (a) which provided that affiliated corporations make a consolidated return if authorized and/or required by the state board of equalization; redesignated former subsection (b) as subsection (4) and inserted "at least eighty per cent * * * of each corporation involved" after "controlling, either directly or indirectly" in the first sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsections (2), (3) and (4).

84-1511. (2303.3) **Return and payment of tax by corporations, etc.**

Sale of Assets in Liquidation

Directors and trustees in liquidation of a liquidated corporation were entitled to a refund of that portion of the corporate license tax paid upon the gain realized by the corporation in the sale of its assets in liquidation. Barth v. Montana State Board of Equalization, 148 M 259, 419 P 2d 484, 485.

84-1512. (2303.4) **Where omission deemed committed—certificate of department as evidence.** The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state department of revenue in the state capitol building, in Helena, Montana. The certificates of the state department of revenue to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933; amd. Sec. 63, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the first sentence and near the beginning of the second sentence.

84-1514. (2303.6) **Delinquency — suspension — forfeiture — dissolution.** If a tax computed and levied hereunder is not paid or if a return is

not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state department of revenue shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and, if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state department of revenue shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state department of revenue shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933; amd. Sec. 1, Ch. 94, L. 1947; amd. Sec. 64, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the second sentence of the first paragraph and at the beginning of the second paragraph.

84-1515. (2303.7) **Reviver of corporation after suspension or forfeiture.** Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state department of revenue showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state, for which he shall receive a filing and recording fee of five dollars ($5). In case the application is made more than one (1) year from the date the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year with respect to which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver for which he shall collect a fee of five dollars ($5) and thereupon the applicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver pro-

vided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933; amd. Sec. 1, Ch. 49, L. 1947; amd. Sec. 15, Ch. 117, L. 1961; amd. Sec. 1, Ch. 52, L. 1967; amd. Sec. 65, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted "more than one (1) year from the date" for "in any taxable year other than the taxable year in which" after "application is made" and substituted "with respect to which" for "in which" after "for the taxable year," both in the third sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence.

Effective Date

Section 2 of Ch. 52, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 18, 1967.

Contract Made During Suspension

Statute providing that reviver shall be without prejudice to any action, defense or right which has accrued by reason of original suspension or forfeiture relates to right of corporation to do business rather than to nonenforceability of contract made by corporation while suspended. Manufacturers Acceptance Corp. v. Krsul, 151 M 28, 438 P 2d 667.

84-1516. (2303.8) **Penalty for violation of act.** Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars ($100) to be imposed, assessed, and collected by the state department of revenue in the same manner as is provided in this act with regard to delinquent taxes.

History: En. Sec. 12, Ch. 166, L. 1933; amd. Sec. 66, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1517. (2303.9) **Failure to make return—estimate and investigation of net income—copy of federal return to be furnished on request—report of change in federal tax—copy of amended federal returns.** (1) If any taxpayer fails to make return as herein required, the state department of revenue is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(2) The state department of revenue, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said department may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the computation schedule

filed for any taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall report such proposed change or correction to the state department of revenue within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state department of revenue within ninety (90) days thereafter.

History: En. Sec. 13, Ch. 166, L. 1933; amd. Sec. 2, Ch. 142, L. 1969; amd. Sec. 67, Ch. 516, L. 1973.

Amendments

The 1969 amendment redesignated subsections (a) and (b) as subsections (1) and (2); and added subsection (3).

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Date

Section 3 of Ch. 142, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 27, 1969.

84-1518. (2303.10) **Reciprocity with federal and other states' revenue officers regarding returns.** The state department of revenue under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 14, Ch. 166, L. 1933; amd. Sec. 68, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

CHAPTER 16—LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

Section
84-1601. Electrical energy producers' license tax.
84-1602. Payment of tax—not to be set out on customers' bills.
84-1603. Disposition of revenue—interest on delinquency.
84-1604. Statement of producer—contents—time for filing.
84-1605. Producers' monthly statement of gross sales—inspection of books of producer.
84-1606. Exemptions.
84-1608. False statements constitute perjury.

84-1601. (2343.1) **Electrical energy producers' license tax.** That in addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through

water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer," shall on or before the fifteenth day of each calendar month beginning with the fifteenth day of May, 1969, render a statement to the state department of revenue of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one and four hundred thirty-eight thousandths per cent (1.438%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided; and such tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter.

History: En. Sec. 1, Ch. 51, Ex. L. 1933; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 1, Ch. 214, L. 1957; amd. Sec. 1, Ch. 5, Ex. L. 1969; amd. Sec. 1, Ch. 391, L. 1971; amd. Sec. 69, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "May, 1969" for "August, 1957" and added a proviso increasing the rate of tax from 1¼% to 1.438% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1.438% rate permanent and added the clause following the final semicolon.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

Effective Date

Section 2 of Ch. 391, Laws 1971 read "This act is effective on April 1, 1971."

Cross-References

Multistate tax compact, sec. 84-6701.

84-1602. (2343.2) **Payment of tax—not to be set out on customers' bills.** Said license tax shall be remitted with the statement and paid on or before the fifteenth (15th) day of each month. No bill, statement or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of, the license tax imposed by this act.

History: En. Sec. 2, Ch. 51, Ex. L. 1933; amd. Sec. 2, Ch. 5, Ex. L. 1969.

Amendments

The 1969 amendment deleted "beginning with the fifteenth (15th) day of April, 1934" at the end of the first sentence.

Effective Date

Section 3 of Ch. 5, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

84-1603. (2343.3) **Disposition of revenue—interest on delinquency.** The state department of revenue shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent and shall bear interest from said due date at the rate of twelve per cent (12%) per annum.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; amd. Sec. 20(F), Ch. 109, L. 1935; amd. Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. 14, L. 1941; amd. Sec. 70, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1604. (2343.4) **Statement of producer—contents—time for filing.** On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state department of revenue of the state of Montana, on forms prescribed by

the state department of revenue, an acknowledged and verified certificate which shall contain:

(a) to (f). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 51, Ex. L. 1933; amd. Sec. 71, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in the preliminary clause.

84-1605. (2343.5) **Producers' monthly statement of gross sales—inspection of books of producer.** That every such producer shall on or before the fifteenth (15) day of each calendar month, beginning with April 15, 1934, and monthly thereafter, render to the state department of revenue of the state of Montana on forms prescribed by the state department of revenue, a statement sworn to by the manager, president, secretary or treasurer, showing the gross proceeds received for or on account of, all sales of electricity and electrical energy for the preceding calendar month. The books and records of such producer shall be subject to inspection by the state department of revenue, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933; amd. Sec. 72, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-1606. (2343.6) **Exemptions.** All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Montana is exempt from the provisions of this act, except in cases where the water so pumped is sold or rented to such irrigated lands; provided, the exemption here given shall accrue to the benefit of the consumer of such electricity and electrical energy. Provided, further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemption had not been made, shall be credited annually for the year in which the exemptions are made, on the power bill of the consumer, by the producer of such electricity and electrical energy, furnishing such power and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Montana, to the state department of revenue as part of the statement required by section 84-1601, together with a statement of credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Montana.

History: En. Sec. 6, Ch. 51, Ex. L. 1933; amd. Sec. 73, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1608. (2343.8) **False statements constitute perjury.** Any person, officer, partner, agent or representative of any producer referred to in section 84-1601, who shall make any false statement, affidavit, certificate, report or statement herein required to be made to the state department of

revenue, hereunder, shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years.

History: En. Sec. 8, Ch. 51, Ex. L. 1933; amd. Sec. 74, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

CHAPTER 17—LICENSE TAXES—EXPRESS COMPANIES

Section
84-1702. Statements to be filed with state department of revenue.
84-1703. Gross receipts—how ascertained.
84-1704. Procedure in case of failure to make statement.
84-1705. Penalty for failure to make statement—duty of attorney general to institute action.
84-1706. State department of revenue authorized to require production of books.
84-1707. Amount and collection of license tax.

84-1702. (2306) **Statements to be filed with state department of revenue.** Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state department of revenue, a statement in such form as the department may prescribe, containing the following facts:

First through Seventh. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 87, L. 1917; re-en. Sec. 2306, R. C. M. 1921; amd. Sec. 75, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the preliminary clause.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1703. (2307) **Gross receipts—how ascertained.**—The state department of revenue shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board [department] shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917; re-en. Sec. 2307, R. C. M. 1921; amd. Sec. 76, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-1704. (2308) **Procedure in case of failure to make statement.** In case of failure or refusal of any express company to make the statement required by law or furnish the department any information required by it, the department shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time before the gross receipts of any express company for business done within

the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the department and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by the department, the department may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper.

History: En. Sec. 4, Ch. 87, L. 1917; re-en. Sec. 2308, R. C. M. 1921; amd. Sec. 69, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization; and deleted "after the meeting of the board and" following "in order to discharge its duty, and at any time" in the middle of the first sentence.

84-1705. (2309) **Penalty for failure to make statement—duty of attorney general to institute action.** In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state department of revenue, shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state.

History: En. Sec. 5, Ch. 87, L. 1917; re-en. Sec. 2309, R. C. M. 1921; amd. Sec. 77, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the second sentence.

84-1706. (2310) **State department of revenue authorized to require production of books.** The state department of revenue shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent or other officer or employee or agent of any express company engaged in an express company business to attend before the department and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. The director of revenue or his appointed agent is authorized and empowered to administer such oath. Any person who shall refuse to attend before the department when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the department affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars.

History: En. Sec. 6, Ch. 87, L. 1917; re-en. Sec. 2310, R. C. M. 1921; amd. Sec. 70, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue

for references to the state board of equalization; and substituted "The director of revenue or his appointed agent" for "Any member of the board" at the beginning of the second sentence.

84-1707. (2311) **Amount and collection of license tax.** The state department of revenue shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state department of revenue as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state department of revenue; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 2311, R. C. M. 1921; amd. Sec. 78, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 18—LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS—SPECIAL FUEL TAX

Section
84-1831. Definitions.
84-1832. Tax imposed.
84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when.
84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.
84-1834. Special fuel dealers' and special fuel users' records.
84-1835. Returns and payments.
84-1836. Credits.
84-1837. Procedures for credits.
84-1838. Administration.
84-1840. Disposition of funds.
84-1840.1. Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system.
84-1841. Judicial review and appeals.
84-1842. Special fuel user's temporary trip permits—agents by whom issued.
84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms.
84-1844. Penalty for operation without temporary permit—compliance bonds.
84-1845. Short title.
84-1846. Definitions.
84-1847. Gasoline license tax—amount.
84-1849. Distributors' statements—payment of the tax.
84-1850. Examination of records.
84-1851. Records to be kept.
84-1852. Inspection of records.
84-1853. Invoice of distributors and aviation dealers.
84-1854. Information reports.
84-1855. Refund of gasoline license tax—procedure.
84-1855.1. Unlawful use of aviation gasoline.
84-1856. Timely mailing treated as timely filing and paying.
84-1857. License and bond of gasoline distributors.

84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax.
84-1859. Penalties.
84-1860. Statute of limitations.
84-1861. Rules and regulations to be established by state department.

84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811. (2381.11 to 2381.21) Repealed.

Repeal

Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806 to 84-1811 (Secs. 1, 3 to 12, Ch. 19, L. 1927; Sec. 4, Ch. 92 L. 1929; Sec. 1, Ch. 175, L. 1929; Sec. 4, Ch. 6, L. 1931; Sec. 1, Ch. 170, L. 1933; Sec. 1, Ch. 116, L. 1935; Sec. 1, Ch. 63, L. 1943; Sec. 1, Ch. 202, L. 1949; Sec. 1, Ch. 52, L. 1951; Sec. 1, Ch. 217, L. 1953; Secs. 1, 2, Ch. 17, L. 1955; Sec. 1, Ch. 230, L. 1957; Sec. 1, Ch. 175, L. 1959; Secs. 1, 2, Ch. 64, L. 1963; Secs. 2 to 6, Ch. 70, L. 1963; Sec. 214, Ch. 147, L. 1963; Sec. 1, Ch. 6, Ex. L. 1967; Sec. 1, Ch. 355, L. 1969), relating to the gasoline license tax, were repealed by Sec. 20, Ch. 369, Laws 1969.

Compiler's Notes

Section 1 of Ch. 355, Laws 1969 purported to amend section 84-1801.1 to increase the tax from six and one-half cents to seven cents for the period from July 1, 1969 to July 1, 1971.

84-1813. (2381.23) Repealed.

Repeal

Section 84-1813 (Sec. 2, Ch. 116, L. 1935; Sec. 1, Ch. 210, L. 1955; Sec. 1, Ch. 73, L. 1963), relating to collection of tax on motor fuel, was repealed by Sec. 1, Ch. 60, L. 1969 and Sec. 20, Ch. 369, Laws 1969. The language of section 84-1813 was re-enacted as section 84-1832.1.

84-1814. (2381.24) Repealed.

Repeal

Section 84-1814 (Sec. 15, Ch. 19, L. 1927), relating to delinquency in payment of the gasoline license tax as a misdemeanor, was repealed by Sec. 20, Ch. 369, Laws 1969.

84-1818, 84-1818.1, 84-1819 to 84-1823. (2396.4 to 2396.9) Repealed.

Repeal

Sections 84-1818, 84-1818.1, 84-1819 to 84-1823 (Secs. 1, 2, Ch. 17, L. 1927; Sec. 1, Ch. 168, L. 1929; Sec. 1, Ch. 175, L. 1931; Secs. 1 to 4, Ch. 157, L. 1933; Sec. 1, Ch. 96, L. 1937; Sec. 1, Ch. 67, L. 1939; Sec. 1, Ch. 130, L. 1947; Sec. 1, Ch. 168, L. 1949; Sec. 1, Ch. 198, L. 1949; Sec. 1, Ch. 221, L. 1953; Secs. 3, 4, Ch. 17, L. 1955; Sec. 1, Ch. 212, L. 1955; Sec. 1, Ch. 17, L. 1963; Secs. 3, 4, Ch. 64, L. 1963; Sec. 1, Ch. 70, L. 1963; Sec. 6, Ch. 126, L. 1963; Sec. 221, Ch. 147, L. 1963; Sec. 1, Ch. 224, L. 1963; Sec. 2, Ch. 251, L. 1967), relating to gasoline tax refunds and to the licensing of gasoline dealers and distributors, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1828, 84-1829. Repealed.

Repeal

Sections 84-1828 and 84-1829 (Secs. 5, 6, Ch. 162, L. 1945), relating to the definition of terms and effect of the "Special Fuel Tax Act" on the license tax upon diesel fuel, were repealed by Sec. 20, Ch. 369, Laws 1969.

84-1830. Title.

Cross-References

Multistate tax compact, sec. 84-6701.

84-1831. Definitions. As used in this act, the following definitions shall apply:

(a). * * * [Same as parent volume.]

(b) "Department" means the state department of revenue.

(c) to (h). * * * [Same as parent volume.]

(i) "Bond" means: (1) a bond duly executed by such special fuel dealer or special fuel user as principal with a corporate surety qualified under the laws of Montana, which bond shall be payable to the state of Montana conditioned upon faithful performance of all requirements of this act, including the payment of all taxes, penalties and other obligations of such special fuel dealer or special fuel user arising out of this act; or (2) a deposit with the state treasurer by the special fuel dealer or special fuel user under such terms and conditions as the department may prescribe of a like amount of lawful money of the United States or bonds or other obligations of the United States or the state of Montana or of any county thereof, of an actual market value not less than the amount so fixed by the board.

History: En. Sec. 2, Ch. 162, L. 1955; amd. Sec. 3, Ch. 247, L. 1959; amd. Sec. 1, Ch. 66, L. 1963; amd. Sec. 7, Ch. 70, L. 1963; amd. Sec. 12-106, Ch. 197, L. 1965; amd. Sec. 79, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (b) for a subdivision defining "board"; and substituted "department" for "board" in subdivision (i).

84-1832. Tax imposed. There is hereby levied and imposed a tax on the use of each and every gallon of special fuel in any motor vehicle while operated upon the highways, equivalent to the lawful tax levied on motor fuel under section 84-1832.1. Said tax, with respect to all special fuel delivered by a special fuel dealer into supply tanks of motor vehicles in this state, shall attach at the time of such delivery and shall be collected by such special fuel dealer from the special fuel user and shall be paid over to the department as hereinafter provided. Said tax, with respect to special fuel acquired by any special fuel user in any manner other than by delivery by a special fuel dealer into a fuel supply tank of a motor vehicle, shall attach at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of the state and shall be paid over to the department by the special fuel user as hereinafter provided. The various counties, incorporated cities and towns and school districts of this state shall be exempt from the levy and imposition of this tax.

History: En. Sec. 3, Ch. 162, L. 1955; amd. Sec. 2, Ch. 66, L. 1963; amd. Sec. 3, Ch. 60, L. 1969; amd. Sec. 1, Ch. 12, L. 1971; amd. Sec. 1, Ch. 277, L. 1971; amd. Sec. 80, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted the reference to "section 84-1832.1" for a reference to repealed "section 84-1813."

Chapter 12, Laws of 1971, substituted a reference to section 84-1847 for a reference to a section 84-1802 in a clause relating to liquid petroleum gases appearing at the end of the first sentence.

Chapter 277, Laws of 1971, deleted "or on liquid petroleum gases under section 84-1847" from the end of the first sentence.

The 1973 amendment substituted "department" for "board" near the end of the second and third sentences.

84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when. The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to nine cents ($.09) for each gallon of diesel fuel or other volatile liquid, of less than forty-six degrees (46°) A.P.I. (American

Petroleum Institute) gravity test, and seven cents ($.07) for each gallon of liquid petroleum gas when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivision.

History: En. 84-1832.1 by Sec. 2, Ch. 60, L. 1969; amd. Sec. 2, Ch. 277, L. 1971; amd. Sec. 81, Ch. 516, L. 1973.

Title of Act

An act to repeal section 84-1813, R. C. M. 1947, and to re-enact its language as a new section for the purpose of removing the statute establishing a tax on diesel fuel from the gasoline license tax laws and its proper placement in the laws pertaining to special fuel taxes; and amending section 84-1832, R. C. M. 1947, to change the reference to section 84-1813 therein to 84-1832.1.

Amendments

The 1971 amendment inserted the clause imposing a tax of seven cents per gallon on liquid petroleum gas in the middle of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits. (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the department.

Every special fuel user shall obtain from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of the department of revenue, or any other law enforcement officer.

Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's "Courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the department of revenue, scale house personnel and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831 (i) and in such form as the department may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars ($5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars ($500) for any other special fuel user; and not less than one thousand dollars ($1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the department may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) and (g). * * * [Same as parent volume.]

(h) Revocation, suspension, cancellation and surrender of license and permit: The department may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation; and the holder of any such permit, having permanently

discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the department for cancellation.

The department shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The department shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831 (i), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831 (i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the department, said department forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user, or other person upon the filing by the state department of revenue of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

History: En. Sec. 4, Ch. 162, L. 1955; amd. Sec. 1, Ch. 216, L. 1957; amd. Sec. 8, Ch. 70, L. 1963; amd. Sec. 1, Ch. 61, L. 1969; amd. Sec. 2, Ch. 12, L. 1971; amd. Sec. 3, Ch. 277, L. 1971; amd. Sec. 71, Ch. 405, L. 1973.

Amendments

The 1969 amendment inserted the second sentence in subsection (d) and, in the second paragraph of that subsection, substituted "five thousand dollars . . . any other special fuel user" for "five hundred dollars ($500.00), for a special fuel user."

Chapter 12, Laws of 1971, substituted section "84-1832.1" for "84-1932.1" in the second paragraph of subsection (d), thus correcting the citation to a tax on certain special fuel users.

Chapter 277, Laws of 1971, added the

third paragraph to subsection (a); added "unless otherwise provided herein" at the end of subsection (b); inserted "Except as herein provided" at the beginning of the first paragraph of subsection (d); inserted "resident" before "special fuel user" in the second sentence of the first paragraph of subsection (d); substituted "the tax as herein provided is not delinquent or that interest or penalties are not accrued" for "no tax, interest or penalties are accrued" in the second sentence of the first paragraph of subsection (d); and made minor changes in punctuation and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section; and deleted "any member of the state board of equalization or" before "any authorized employee" near the end of the second paragraph of subsection (a).

Effective Date

Section 3 of Ch. 12, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

84-1834. Special fuel dealers' and special fuel users' records. (a) Preparation of records and inspection of: Every special fuel dealer, special fuel user and every person importing, manufacturing, refining, dealing in, transporting or storing, special fuel in this state, shall keep such records, receipts and invoices and other pertinent papers, with respect thereto as the department may require, and shall produce them for the inspection of the department at any time during the business hours of the day.

(b). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 162, L. 1955; amd. Sec. 2, Ch. 216, L. 1957; amd. Sec. 82, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" twice near the end of subsection (a).

84-1835. Returns and payments. (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's monthy tax liability is or will be ten dollars ($10) or less.

Such user shall make an annual report and return to the department, on forms prescribed by said department on or before the 25th day of January of each year hereafter. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale dis-

tribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) and (c). * * * [Same as parent volume.]

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars ($25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this subsection.

(e). * * * [Same as parent volume.]

(f) Deficiency: If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it

and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (d) above.

An assessment made by the department pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i). * * * [Same as parent volume.]

History: En. Sec. 6, Ch. 162, L. 1955; amd. Sec. 9, Ch. 70, L. 1963; amd. Sec. 1, Ch. 52, L. 1969; amd. Sec. 2, Ch. 61, L. 1969; amd. Sec. 4, Ch. 277, L. 1971; amd. Sec. 83, Ch. 516, L. 1973.

Amendments

Chapter 52, Laws of 1969, substituted "twenty-five dollars ($25)" for "one hundred dollars ($100)" after "there is hereby imposed" in subsection (d).

Chapter 61, Laws of 1969, inserted in subsection (a) the language now appearing in the fourth and fifth paragraphs and a final paragraph reading: "Upon annual application the board may waive the filing of a monthly tax return of any special fuel user who establishes to the reasonable satisfaction of the board that no tax, interest or penalties are accrued under the provisions of this act."

The 1971 amendment inserted in subsection (a) the second paragraph and the first and second sentences of the third paragraph; inserted "annual or monthly" after "such return" at the beginning of the third sentence of the third paragraph of subsection (a); deleted from subsection (a) the final paragraph added by Ch. 61, Laws of 1969; and made minor changes in punctuation and style.

The 1973 amendment substituted "department" for "board" throughout the section.

Repealing Clause

Section 5 of Ch. 277, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Effective Dates

Section 2 of Ch. 52, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 20, 1969.

Section 6 of Ch. 277, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 10, 1971.

84-1836. Credits. Any licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased, shall receive credit in the amount of any tax paid on special fuel exported for use outside of this state, or for any use off the public roads and highways of this state, or for any overpayment of special fuel taxes not due to the state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.

Any licensed special fuel user who purchases a temporary special fuel permit, and thereafter applies for a special fuel vehicle permit for the same vehicle in less than eleven (11) days after the temporary permit is issued, shall receive credit in the amount of the temporary permit fee.

History: En. Sec. 7, Ch. 162, L. 1955; amd. Sec. 1, Ch. 104, L. 1967.

Amendments

The 1967 amendment substituted "licensed special fuel user or licensed special fuel dealer" for "person" near the beginning of the first paragraph; added "or for any use * * * to the state" at the end of the first sentence of the first paragraph; and added the second paragraph.

84-1837. Procedures for credits. Should a licensed special fuel user or licensed special fuel dealer desire to receive refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under section 84-1836 shall first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the dealer or user, and a warrant shall be drawn upon the state treasurer for the amount of such claim and same shall be paid in the same manner as other claims against the state are paid.

Provided however, in case any special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within twelve (12) months from the date his special fuel license became canceled, the department shall be under no obligation to make a refund.

History: En. Sec. 8, Ch. 162, L. 1955; amd. Sec. 2, Ch. 104, L. 1967; amd. Sec. 84, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted the first sentence of the first paragraph; added "and a warrant shall be * * * claims against the state are paid" at the end of the first paragraph; and added the second paragraph.

The 1973 amendment substituted "department" for "board" in four places.

84-1838. Administration. (a) Rules and regulations: The department shall enforce the provisions of this act, and may prescribe, adopt and enforce reasonable rules and regulations relating to the administration and enforcement thereof.

(b) Examination of records: The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand, they shall be furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may

consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(c). * * * [Same as parent volume.]

(d) Reciprocal exchange of data: The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state.

History: En. Sec. 9, Ch. 162, L. 1955; amd. Sec. 1, Ch. 106, L. 1967; amd. Sec. 85, Ch. 516, L. 1973.

Amendments

The 1967 amendment inserted "and shall be accompanied by the special fuel dealer or special fuel user" after "review" in the second sentence of subsection (b).

The 1973 amendment substituted "department" for "board" throughout the section.

84-1840. Disposition of funds. All taxes, interest and penalties collected under this act shall be turned over promptly to the state treasurer and the state treasurer shall place the same in the earmarked revenue fund to the credit of the state highway department.

(1) Three million dollars ($3,000,000) of the funds collected under this act shall be allocated each fiscal year to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance and repair of rural roads, and city or town streets and alleys, as provided in subsections (a) and (b) hereof,

(a) One million two hundred thousand dollars ($1,200,000) shall be divided among the various counties in the following manner:

(i) Forty per centum (40%) in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system.

(ii) Forty per centum (40%) in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns.

(iii) Twenty per centum (20%) in the ratio that the land area of each county bears to the total land area of the state.

(b) One million eight hundred thousand dollars ($1,800,000) shall be divided among the incorporated cities and towns in the following manner:

(i) Fifty per cent (50%) of the sum shall be divided in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana.

(ii) Fifty per cent (50%) shall be divided in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corpo-

rate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds hereby allocated to counties, cities and towns shall be used exclusively for the construction, reconstruction, maintenance and repair of rural roads, city or town streets and alleys, or for the share which such city, town or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system, or urban extensions thereto, provided that not more than fifty per cent (50%) or one thousand dollars ($1,000), whichever amount is greater, of the funds allocated each fiscal year, beginning with the fiscal year starting July 1, 1971, to any county, incorporated city and town may be expended for maintenance and repair of rural roads or city or town streets.

(3) Upon receipt of the allocation provided herein, the county commissioners, in the case of counties, or the governing body, in the case of incorporated cities or towns, shall propose the expenditure of said funds to the state highway commission. The commission may consult with the county commissioners or the governing body proposing expenditures before approving the same provided, however, that before any contract for the expenditure of funds provided herein shall be let, an agreement covering the same shall be executed by both the proposing body and the state highway commission.

(4) All construction, reconstruction, maintenance and repair authorized herein shall be pursuant to the design and subject to the supervision of the state highway commission, and all funds hereby allocated to counties, cities and towns shall be disbursed by the state highway commission to the lowest responsible bidder according to the bidding procedures specified in chapter 41, Title 32 of this code except that not more than seven thousand five hundred dollars ($7,500) of the funds allocated each fiscal year to any county, incorporated city and town may be expended without being submitted to bids.

(5) The state highway commission shall make and establish such rules and regulations as may be necessary to carry out the intent of this act and shall keep records of the funds allocated to each city or town, and the subsequent expenditure of said funds.

(6) For the purposes of this act where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(7) For the purposes of this act where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns and counties to furnish to the state highway commission a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the state highway commission.

(8) None of the funds authorized by this section shall be used for the purchase of capital equipment.

History: En. Sec. 11, Ch. 162, L. 1955; amd. Sec. 213, Ch. 147, L. 1963; amd. Sec. 2, Ch. 6, Ex. L. 1967; amd. Sec. 2, Ch. 355, L. 1969; amd. Sec. 1, Ch. 384, L. 1971; amd. Sec. 1, Ch. 338, L. 1973.

Amendments

The 1967 amendment added subdivisions (1) through (7).

The 1969 amendment substituted "The lesser of the following amounts" at the beginning of subdivision (1) for "One million five hundred thousand dollars ($1,500,000)"; inserted "maintenance" after "reconstruction" in the first paragraph of subdivision (1); inserted at the end of the first paragraph of subdivision (1) clauses reading "(i) Three million dollars ($3,000,000) or (ii) Sixty-six per cent (66%) of the amount of state matching funds saved under the provisions of clause B of section 120 (a) of Title 23, United States Code, but not less than one million five hundred thousand dollars ($1,500,000)"; inserted after clauses (i) and (ii) in subdivision (1) a paragraph reading "In any fiscal year when the amount of funds allocated to the counties and incorporated cities and towns under subsection (1) (ii) does not equal three million dollars ($3,000,000) the difference between the three million dollars ($3,000,000) and the funds allocated for that year shall carry forward and be allocated to the counties and incorporated cities and towns in subsequent fiscal years"; substituted "Forty per cent (40%)" at the beginning of subdivision (1)(a) for "Six hundred thousand dollars ($600,000)"; substituted "Sixty per cent (60%)" at the beginning of subdivision (1)(b) for "Nine hundred thousand dollars ($900,000)"; inserted "exclusive of the federal-aid interstate system and the federal-aid primary system" in two places in subdivision (1)(b)(ii); inserted "maintenance" after "reconstruction" in subdivisions (2) and (4); added "with the exception that five per cent (5%) of the funds allocated each fiscal year to any county, incorporated city and town or seven thousand five hundred dollars ($7,500), whichever amount is greater, may be expended for maintenance of rural roads and city or town streets without being submitted to bid" to the end of subdivision (4); added subdivision (8); and made minor changes in phraseology.

The 1971 amendment added the proviso to subdivision (2); substituted the exception at the end of subdivision (4) for the language added by the 1969 amendment; and deleted from subdivision (8) a second sentence reading "Section 2(b), effective July 1, 1971, the total amount of funds allocated each fiscal year in section 2 (a)(1) to the counties and incorporated cities and towns shall reduce to one million five hundred thousand dollars ($1,500,000)."

The 1973 amendment substituted "Three million dollars ($3,000,000)" at the beginning of subdivision (1) for the language substituted there by the 1969 amendment; deleted the clauses (i) and (ii) and the paragraph inserted in subdivision (1) by the 1969 amendment; substituted "One million two hundred thousand dollars ($1,200,000)" at the beginning of subdivision (1)(a) for "Forty per cent (40%)"; substituted "One million eight hundred thousand dollars ($1,800,000)" at the beginning of subdivision (1)(b) for "Sixty per cent (60%)"; increased from 10% to 50% the portion of allocated funds expendable for maintenance and repairs authorized by the proviso to subdivision (2); and made minor changes in phraseology.

Repealing Clauses

Section 3 of Ch. 6, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 355, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 3 of Ch. 384, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clauses

Section 4 of Ch. 6, Ex. Laws 1967 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 4 of Ch. 355, Laws 1969 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Section 2 of Ch. 384, Laws 1971 read "The provisions of this act shall be severable and if any of its sections, provisions, exceptions, sentences, clauses, phrases, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Allocation of Overhead Costs

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among the various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

Funds from Sources other than Gasoline Tax

Prohibition against expenditure of gasoline tax revenues for nonhighway purposes

has no application to street funds derived from other sources; thus proceeds of levy under another statute could be committed to finance proportionate share of construction costs of city shop complex to be used by various city departments. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

84-1840.1. Allocation of funds—participation in railroad grade crossing protection on public highways, roads or streets, other than those designated on the interstate, primary or urban system. The sum of one hundred thousand dollars ($100,000) may be allocated from the earmarked revenue fund, state highway account for the fiscal year ending June 30, 1973, and so much for each succeeding fiscal year as may be necessary to reimburse the fund for expenditures and commitments made and to maintain the fund at one hundred thousand dollars ($100,000) at the beginning of each fiscal year thereafter, for participation by the department of highways with railroads in construction of railroad grade crossing protection on any public highway or road, except those designated on the interstate, primary or urban systems, within the state of Montana. The department of highways shall select those grade crossings in the state which in the opinion of the department are most in need of additional crossing protection and shall finance the cost thereof solely from this fund. Signal protection provided under the fund shall be limited to electric or automatic flashing lights or gates depending on the amount and nature of the hazards present at the crossing and participation in construction of such signals shall be on the same basis and under the same standards as are applicable and used in connection with protection of grade crossings on federal-aid roads within the state, provided, however, the fund shall not be used for protection of grade crossings on the secondary system where the protection is considered necessary and the cost thereof is financed in part with federal-aid highway funds. In addition to the funds allocated, counties and cities may authorize the use of funds available to said counties and cities under the provisions of section 84-1840 for participation of installation in grade crossing protection within the county or city.

History: En. 84-1840.1 by Sec. 1, Ch. 399, L. 1973.

Title of Act

An act to amend Title 84, chapter 18, R. C. M. 1947, by adding a new section designated 84-1010.1, R. C. M. 1947, allocating funds to be used by the department of highways for the participation with railroads for erection of railroad grade crossing protection on roads and streets except those on the interstate, primary or urban systems; providing for reimbursement of the fund at the beginning of each fiscal year; providing that the department of highways shall select the crossings to be protected and that participation be on the same basis as applicable on federal-aid roads; authorizing counties and cities to use funds allocated to them from gasoline tax money for participation in grade crossing protection; repealing all acts and parts of acts in conflict herewith, provided, however, that sections 72-164 to 72-168, R. C. M. 1947, inclusive are not repealed; and providing that this act shall be effective on passage and approval.

Repealing Clause

Section 2 of Ch. 399, Laws 1973 read "All acts and parts of acts in conflict herewith are hereby repealed, provided, however, that sections 72-164 to 72-168 inclusive are not repealed."

Effective Date

Section 3 of Ch. 399, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

84-1841. Judicial review and appeals. Any determination of the department hereunder may be reviewed by the district court of Lewis and

Clark county, and an appeal may be taken from the judgment of said district court to the supreme court.

History: En. Sec. 12, Ch. 162, L. 1955; amd. Sec. 86, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-1842. Special fuel user's temporary trip permits—agents by whom issued. Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit, as provided by section 84-1833, shall be required to purchase a special fuel user's temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight (g.v.w.) patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe by order, rule or regulation.

History: En. Sec. 1, Ch. 200, L. 1961; amd. Sec. 1, Ch. 105, L. 1967; amd. Sec. 87, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted the present first sentence of the section for a former first sentence which read "A temporary permit shall be issued to all unlicensed users of all special fuel vehicles operating within the state of Montana."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1843. Fees for temporary permits—time of expiration—disposition of fees—forms. The temporary special fuel permits shall cost the special fuel vehicle user a fee of twenty dollars ($20.00); said permit shall be valid for a period of time not to exceed seventy-two (72) hours and will be automatically void should said vehicle leave the state of Montana during the seventy-two (72) hour period. All fees collected will be remitted to the state department of revenue. Special fuel temporary permits, remittance forms and any other necessary papers for the accounting and enforcement of this act shall be furnished by the state department of revenue.

History: En. Sec. 2, Ch. 200, L. 1961; amd. Sec. 88, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the second and third sentences.

84-1844. Penalty for operation without temporary permit—compliance bonds. Any unlicensed user of special fuel vehicles operating within the state of Montana, without making application for said temporary permit, and paying the specified fee, shall be guilty of committing a misdemeanor and upon conviction, be fined fifty dollars ($50.00). Nothing contained herein shall affect the existing policy of accepting a compliance bond to be retained for use by the state department of revenue and to be imposed at the discretion of the enforcing agency.

History: En. Sec. 3, Ch. 200, L. 1961; amd. Sec. 89, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1845. Short title. This act may be cited as the "Distributor's Gasoline License Tax Act."

History: En. Sec. 1, Ch. 369, L. 1969.

Title of Act

An act providing for the amount of the distributor's gasoline license tax; payment of the tax by distributors; establishing a refund procedure; licensing of gasoline distributors; empowering the state board of equalization to establish regulations; providing for enforcement of the act by penalties; and repealing sections 84-1801 through 84-1814, 84-1818 through 84-1823, 84-1828, and 84-1829, R. C. M. 1947, relating to the gasoline dealer's license tax.

84-1846. Definitions. As used in this act, the following definitions shall apply:

(1) The term "gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline and all flammable liquids, composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. The term "gasoline" does not include special fuels as defined in section 84-1831 (e).

(2) The word "person" means any person, firm, association, joint-stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state, other than in the fuel supply tank of a motor vehicle.

(6) Gasoline deemed to be "distributed." (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat, or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat, or gasoline imported into this state and placed in storage at refineries or pipeline terminals, shall be deemed to be distributed, for the purpose of this act, at the time the gasoline is withdrawn from such tanks, refinery or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be distributed after it has arrived in and is brought to rest in this state.

(7) The word "distributor" means

(a) any person who engages in the business in this state of producing, refining, manufacturing or compounding gasoline for sale, use or distribution,

(b) any person who imports gasoline for sale, use or distribution,

(c) any dealer licensed as of January 1, 1969, except a dealer at an established airport.

(8) The words "aviation gasoline" mean gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(9) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline either from a wholesale or retail outlet on which the license tax has been paid to a licensed distributor as herein provided for.

History: En. Sec. 2, Ch. 369, L. 1969; amd. Sec. 1, Ch. 13, L. 1971; amd. Sec. 1, Ch. 204, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 13 and once by Ch. 204. Neither amendatory act mentioned nor incorporated the changes made by the other. Since the changes made by the two acts do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendatory acts.

Amendments

Chapter 13, Laws of 1971, deleted from the end of paragraph (7)(b) a provision reading, "and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the state aeronautics commission by section 1-501."

Chapter 204, Laws of 1971, added subdivision (9) and made minor changes in style.

84-1847. Gasoline license tax—amount. Every distributor shall pay to the state department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission as provided by section 1-501, R. C. M. 1947, as amended, and seven cents (7¢) for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax.

History: En. Sec. 3, Ch. 369, L. 1969; amd. Sec. 1, Ch. 202, L. 1971; amd. Sec. 2, Ch. 204, L. 1971; amd. Sec. 90, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 202 and once by Ch. 204. Both acts were approved by the governor on March 3, 1971. Chapter 204 incorporated the change made by Ch. 202 and the title to Ch. 204 referred to "the present seven cents." Therefore, the compiler has used the text of Ch. 204 above.

Amendments

Chapter 202, Laws of 1971 increased the tax from six and one-half cents to seven cents per gallon.

Chapter 204, Laws of 1971, included the change made by Ch. 202; reduced the tax on aviation gasoline to one cent; and inserted the clause providing for allocation to the aeronautics commission.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

Effective Date

Section 2 of Ch. 202, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

84-1848. Repealed.

Repeal

Section 84-1848 (Sec. 4, Ch. 369, L. 1969), relating to aviation gasoline tax exemption certificates, was repealed by Sec. 3, Ch. 204, Laws 1971.

84-1849. Distributors' statements—payment of the tax. Each distributor shall, not later than the twenty-fifth day of each calendar month render a true statement to the state department of revenue, duly signed, of all gasoline distributed and received by him in this state during the preceding calendar month, and containing such other information as the state department of revenue may reasonably require in order to administer the gasoline license tax law. The statement shall be accompanied by a payment in an amount equal to the tax imposed by section 3 (84-1847) of this act, less any refund credit issued under section 11 (84-1855) of this act, and less two per cent (2%) of the first six cents (6¢) tax which shall be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by such distributor; provided, however, that no such allowance shall be deducted from the one cent (1¢) tax on aviation gasoline.

Any distributor engaged in or carrying on his business at more than one (1) place or location in this state may include all such places of business in one (1) statement.

History: En. Sec. 5, Ch. 369, L. 1969; amd. Sec. 4, Ch. 204, L. 1971; amd. Sec. 91, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the proviso at the end of the first paragraph for a separate sentence reading "In addition a distributor may deduct for each gallon of aviation gasoline sold by him and for which he submits a valid gasoline tax exemption certificate, an amount equal to the tax per gallon except the portion thereof allocated to the state aeronautics commission by section 1-501"; and made minor changes in style.

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle and end of the first sentence of the first paragraph.

84-1850. Examination of records. The department, or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any gasoline distributor or any person dealing in, transporting, or storing gasoline as defined in this act and to investigate the character of the disposition which any person makes of such gasoline in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records and equipment are not maintained in this state at the time of demand they shall be furnished to the department for review or such dealer shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding one (1) week or for such longer period as he may consent to in writing, unless the result of such examination is the payment of a tax deficiency.

History: En. Sec. 6, Ch. 369, L. 1969; amd. Sec. 92, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-1851. Records to be kept. Each distributor or any other person dealing in, transporting, receiving or storing gasoline shall keep for a period not to exceed three (3) years such records, receipts and invoices and any other pertinent papers and information as the state department of revenue may require.

History: En. Sec. 7, Ch. 369, L. 1969; amd. Sec. 5, Ch. 204, L. 1971; amd. Sec. 93, Ch. 516, L. 1973.

Amendments

The 1971 amendment inserted "or any other person dealing in, transporting, receiving or storing gasoline."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1852. Inspection of records. The records, receipts and invoices and any other pertinent papers supporting sales of every distributor or any person dealing in, transporting or storing gasoline shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours in order to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 369, L. 1969; amd. Sec. 94, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-1853. Invoice of distributors and aviation dealers. Each distributor and aviation dealer in this state shall at the time of delivery, except where authorized by the department, issue to the purchaser an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and such other information as the state department of revenue may require.

History: En. Sec. 9, Ch. 369, L. 1969; amd. Sec. 6, Ch. 204, L. 1971; amd. Sec. 95, Ch. 516, L. 1973.

Amendments

The 1971 amendment inserted "and aviation dealer."

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the middle and end of the section.

84-1854. Information reports. Any person receiving gasoline, including every common carrier, private carrier and contract carrier of property who shall haul, receive, transport, or ship any gasoline, from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of revenue upon its request and within the time specified a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of such products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee and the date of delivery to the consignee.

In case of any person, except licensed distributors, who refuses or fails to file a statement as herein provided for, there is hereby imposed a penalty of twenty-five dollars ($25) for each failure or refusal, provided, however, that if any person shall establish to the satisfaction of the department that his failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

History: En. Sec. 10, Ch. 369, L. 1969; amd. Sec. 96, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-1855. Refund of gasoline license tax—procedure. (1) Any person who shall purchase and use any gasoline, on which the Montana gasoline license tax has been paid, for operating or propelling stationary gasoline engines, tractors used off the public highways and streets, motorboats, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, shall be allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. Provided, that such refund or drawback should in no instance exceed the tax paid or to be paid, to the state of Montana [, and no refund shall be allowed of that portion of the tax per gallon upon aviation gasoline allocated to the board of aeronautics by section 1-501, R. C. M. 1947].

Any distributor paying the gasoline license tax to this state erroneously shall be allowed a credit or refund of the amount of tax so paid.

(2) The application for refund shall be a signed statement on a form furnished by the department, accompanied by the original invoice or invoices issued to the claimant at the time of purchase and delivery, showing the total amount of gasoline purchased, the total amount of gasoline on which a refund is claimed, and the amount of the tax claimed for refund. Such further information pertaining to such claim shall be furnished as required by the department, provided that gallons of gasoline used off the roadways, where not verifiable by records of actual use, may be estimated by the applicant according to the following schedule:

(a) on the first one thousand (1,000) gallons of gasoline purchased, or any part thereof, forty-five per cent (45%) of gasoline purchased.

(b) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty per cent (60%) of gasoline purchased.

(c) on the next one thousand (1,000) gallons of gasoline purchased, or any part thereof, sixty-five per cent (65%) of gasoline purchased.

(d) on any gasoline purchased in excess of three thousand (3,000) gallons, seventy per cent (70%) of gasoline purchased.

If any invoice is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department.

(3) Any applicant who does not elect to estimate the off-highway use of gasoline according to the schedule in subsection (2) shall maintain records as provided for in this subsection.

(a) Highway and off-highway use of gasoline from common storage. Gasoline purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detail withdrawal records to accurately show the manner in which used. Gasoline on hand, determined by actual measurement, shall be deducted from a claim and shall be reported as an opening inventory on the next claim. Credit for the inventory is allowed on the next claim if

filed within fourteen (14) months from the filing date of the claim which established the inventory.

(b) Highway and off-highway use of gasoline from separate storage. If separate storage tanks are maintained for highway use and off-highway use, the bulk purchase invoices shall be so marked by the dealer at the time of delivery. No further record is required, provided that no gasoline is withdrawn from the off-highway tank for licensed vehicles. Withdrawal of gasoline from the off-highway tank for licensed vehicles will invalidate this method of determining refundable gallonage.

(c) Use of gasoline from restricted use storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain periods, must be identified and explained. If such storage is used entirely for off-highway purposes and is not used in licensed vehicles, no records will be required other than purchase invoices showing the delivery into such storage.

(d) Gasoline purchased for other than bulk storage. Fuel purchased in small containers for nonhighway use must be identified on the purchase invoice and no further record is required.

(e) Resellers. Service stations, bulk dealers and marinas must prepare a separate and complete invoice for each withdrawal of gasoline for own use upon which a refund is to be claimed.

(f) Proof of highway use. When no highway use of gasoline is deducted from the claim, the applicant must substantiate purchases of gasoline and miles traveled for licensed motor vehicles upon request of the department.

(g) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the gasoline used to operate the vehicle on roads or property in private ownership, if such person has maintained the following records:

(i) the total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(ii) total gallons of gasoline used in each vehicle to include both refund and nonrefund use;

(iii) purchase invoices supporting all gasoline handled through bulk storage, as well as all fuels purchased at service stations or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(4) All applications for refunds shall be filed with the department of revenue within fourteen (14) months after the date on which the gasoline was purchased as shown by invoices or after the date on which the tax was erroneously paid. Provided, however, that a distributor may file a claim for refund of taxes erroneously paid within three (3) years after the date of such erroneous payment. Except in the case of a claim for refund of taxes erroneously paid by a distributor, no claimant may make more than one (1) application for refund during any calendar year. The department shall have one hundred twenty (120) days after

receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim, if the claimant is a distributor. For all other persons, a warrant shall be drawn upon the state treasurer for the amount of the claim.

(5) Should the department of revenue find that the statement contains errors which are not fraudulently inserted, it may correct the statement and approve it as corrected, or the department may require the claimant to file an amended statement. If the state department of revenue determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department may reject such claim in full. If a claim is rejected, the department may suspend claimant's right to refund for a period not to exceed one (1) year.

(6) Any person, other than a licensed distributor, shall obtain a license from the state department of revenue prior to selling gasoline on which a refund may be claimed. The application for license shall contain the applicant's name, address, place or places of business in the state of Montana, and other information which may be required by the department. Licenses issued shall bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. Licenses shall be issued for the calendar year upon payment of a fee of one dollar ($1) and must be renewed annually before the first day of January.

Any person failing to comply with this subsection shall be subject to a fine of not less than twenty-five dollars ($25) or more than two hundred dollars ($200) or imprisonment in the county jail for a period not less than ten (10) days or more than sixty (60) days, or both fine and imprisonment.

History: En. Sec. 11, Ch. 369, L. 1969; amd. Sec. 2, Ch. 13, L. 1971; amd. Sec. 7, Ch. 204, L. 1971; amd. Sec. 1, Ch. 400, L. 1971; amd. Sec. 1, Ch. 200, L. 1973; amd. Sec. 97, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 200 and once by Ch. 516. The changes made by Ch. 516 were included in the changes made by Ch. 200; therefore the compiler has set out the text of Ch. 200 above.

Amendments

Chapter 13, Laws of 1971, added at the end of the first paragraph of subsection (1) the language enclosed in brackets.

Chapter 204, Laws of 1971, deleted "airplanes or aircraft" from the first sentence of the first paragraph of subsection (1); and deleted from the end of the first paragraph of subsection (1) a clause reading "and no refund shall be allowed on any sale with respect to which an aviation gasoline tax exemption certificate has been issued."

Chapter 400, Laws of 1971, inserted "the total amount of gasoline purchased" in the first sentence of the third paragraph of subsection (1); deleted "and the reason" following "gasoline on which a refund is claimed" in the first sentence of the third paragraph of subsection (1); added the proviso to the second sentence of the third paragraph of subsection (1); inserted the third and fourth sentences in the third paragraph of subsection (1); deleted from the third paragraph of subsection (1) a sentence reading: "Each separate delivery shall constitute a purchase"; extended the time for filing applications, as set forth in the first sentence of subsection (2) from 13 to 14 months after the date of purchase or tax payment; and made minor changes in phraseology and punctuation.

Chapter 200, Laws of 1973, substituted "board of aeronautics" for "state aeronautics commission" at the end of the first paragraph of subsection (1); divided former subsection (1) into subsections (1) and (2); substituted references to the department of revenue for references to the state board of equalization throughout the

section; inserted "original" and "at the time of the purchase and delivery" in the first sentence of subsection (2); substituted the proviso and new subdivisions (a) through (d) for the end of the second sentence in subsection (2) and the third, fourth and fifth sentences of that paragraph; inserted subsection (3); renumbered former subsection (2) as (4); inserted the third sentence in subsection (4); renumbered former subsection (3) as (5); deleted former subsections (4) and (5); and substituted "license" for "permit" throughout subsection (6).

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 3 of Ch. 13, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Section 2 of Ch. 200, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 7, 1973.

DECISIONS UNDER FORMER LAW

Motorboat Fuel

Under prior law which did not provide for tax refund for gasoline used in motorboats, one who consumed gasoline in motorboat in off-highway use was not entitled to refund on basis of due process and equal protection clauses of constitution, since dealer, rather than the consumer, is the taxpayer, and since consumer, as a boat user, was not proper party to represent all nonhighway users. Harvey v. Blewett, 151 M 427, 443 P 2d 902.

84-1855.1. Unlawful use of aviation gasoline. It shall be unlawful for any person to use aviation gasoline, or to sell such gasoline for use, in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section shall be a misdemeanor subject to the penalties provided in section 84-1859, R. C. M. 1947.

History: En. Sec. 84-1855.1 by Sec. 8, Ch. 204, L. 1971.

Title of Act

An act providing simplified administrative procedures in the taxation of aviation gasoline for allocation to the aeronautics commission by subjecting such gasoline to a one cent (1¢) per gallon tax rather than the present seven cents (7¢) and by allowing no deduction, refund, or exemption from the tax; deleting aviation gasoline from those provisions of the gasoline license tax laws which provide evaporation allowances and credit refunds; providing a definition of "aviation dealer"; providing a new section numbered 84-1855.1, R. C. M. 1947, imposing a penalty; amending sections 84-1846, 84-1847, 84-1849, 84-1851, 84-1853 and 84-1855, R. C. M. 1947; repealing section 84-1848, R. C. M. 1947, pertaining to aviation gasoline tax exemption certificates.

Repealing Clause

Section 3 of Ch. 204, Laws 1971 read "Section 84-1848, R. C. M. 1947, is hereby repealed in its entirety."

84-1856. Timely mailing treated as timely filing and paying. Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post-office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance, or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance, or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States post office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the date for filing any claim, statement, remittance, or other document falls upon a Saturday, Sunday or legal holiday, the filing shall be considered timely if done on the next business day.

History: En. Sec. 12, Ch. 369, L. 1969.

84-1857. License and bond of gasoline distributors. All gasoline distributors prior to the commencement of doing business shall file an application for a license with the state department of revenue on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state department of revenue, but in no case more than twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the state department of revenue shall issue to the distributor a nonassignable license which shall continue in force until surrendered or canceled.

History: En. Sec. 13, Ch. 369, L. 1969; amd. Sec. 98, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-1858. Penalties—delinquent payment—procedure in case of failure to file statement or pay tax—lien for tax. Any license tax not paid within the time provided shall be delinquent and a penalty of ten per cent (10%) shall be added to the tax and the tax shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department may waive penalty.

If any distributor or other person subject to the payment of such license tax shall willfully fail, neglect, or refuse to make any statement required by this act, or shall willfully fail to make payment of such license tax within the time provided, the state department of revenue shall be authorized to revoke any license issued under this act. In addition, the department shall inform itself regarding the matters required to be in such statement and determine the amount of the license tax due the state from such distributor, and shall add thereto a penalty of twenty-five dollars ($25) or ten per cent (10%) thereof, whichever is greater, together with interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer shall proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer, the attorney general

shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes, penalties and interest due from any distributor under the provisions of this act, shall be a lien upon any and all property of such distributor or other person upon the filing by the state department of revenue of a copy of its statement, or a certified copy of any statement filed with the department, in the office of the county clerk of the county where the distributor's property is situated. The lien shall have precedence over any other claim, lien or demand filed or recorded thereafter. The lien may be enforced in the name of this state in the same manner as judgment liens are enforced. No action shall be maintained to enjoin the collection of all or any part of the license tax. When the amount due is paid in full before the entry of foreclosure decree, the state treasurer shall release the lien by filing in the office of the county clerk where the lien was filed, a written release. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of the lien a part of the distributor's property to enable the distributor to mortgage, sell or otherwise dispose of it in order to procure funds to pay taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to the lien to ensure the payment of all the unpaid taxes, penalty and interest.

History: En. Sec. 14, Ch. 369, L. 1969; amd. Sec. 99, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the end of the first paragraph and four times in the second paragraph.

84-1859. Penalties. Any distributor or other person, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time provided, or who shall be delinquent in the payment of any license tax imposed by this act, or who shall make any false statement with reference to his business, or who shall make any false statement on any claim for refund or who violates any provision of the act, shall, in addition to any other penalties imposed, be deemed guilty of a misdemeanor and upon conviction shall be fined in any amount not exceeding one thousand dollars ($1,000) or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 15, Ch. 369, L. 1969.

84-1860. Statute of limitations. Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed within three (3) years from the due date of the return or the date of filing the return, whichever period expires later.

History: En. Sec. 16, Ch. 369, L. 1969.

84-1861. Rules and regulations to be established by state department. The state department of revenue shall have the power, and it shall be its duty to adopt, publish and enforce the rules and regulations consistent with and necessary for carrying out the provisions of this act.

History: En. Sec. 17, Ch. 369, L. 1969; amd. Sec. 100, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

Separability Clause

Section 18 of Ch. 369, Laws 1969 read "If any section, subsection, sentence or clause in the act shall, for any reason, be held unconstitutional or void, such decision shall not affect the validity or meaning of any other portion of this act."

Repealing Clauses

Section 19 of Ch. 369, Laws 1969 repealed all acts and parts of acts in conflict therewith.

Section 20 of Ch. 369, Laws 1969 read "Sections 84-1801, 84-1801.1, 84-1802, 84-1802.1, 84-1803, 84-1803.1, 84-1804, 84-1805, 84-1805.1, 84-1806, 84-1807, 84-1808, 84-1809, 84-1810, 84-1811, 84-1813, 84-1814, 84-1818, 84-1818.1, 84-1819, 84-1820, 84-1821, 84-1822, 84-1823, 84-1828, and 84-1829, R. C. M. 1947, are repealed."

CHAPTER 19—LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section
84-1901. Disposition of moneys from certain designated license and other taxes.

84-1901. Disposition of moneys from certain designated license and other taxes. The state treasurer shall deposit to the credit of the state general fund all moneys received by him from the collection of automobile drivers' license fees under section 1741.11, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inclusive, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy per centum (70%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, subject to the prior pledge and appropriation of such income tax and corporation license tax collections for the payment of long-range building program bonds. The remaining twenty-five per centum (25%) of the proceeds of the corporation license tax and income tax shall be deposited to the credit of the earmarked revenue fund for state equalization aid to the public schools of Montana; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him from the collection of license taxes, fees and from all other sources under the operation of the Montana Beer Act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the State Liquor Control Act, being sections 4-101 to 4-237, inclusive.

History: En. Sec. 1, Ch. 14, L. 1941; amd. Sec. 51, Ch. 147, L. 1963; amd. Sec. 6, Ch. 276, L. 1965; amd. Sec. 51, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana" after "aid to the public schools of Montana" in the second sentence; and corrected an erroneous section number.

CHAPTER 20—LICENSE TAXES—METALLIFEROUS MINES

Section
84-2003. Gross value of products, how determined.
84-2004. Amount of tax.
84-2005. Statement of gross value of product.
84-2006. Computation and notice of tax.
84-2008. Procedure in case of failure to file statement.
84-2009. False or erroneous statements—investigation concerning.
84-2010. Hearing on determination of value of gross product or amount of tax.
84-2011. Lien of tax.
84-2012. License.
84-2013. Commencing business.
84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

84-2002. (2344.2) **Persons liable to pay license tax.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-2003. (2344.3) **Gross value of products, how determined.** The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semiprecious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925; amd. Sec. 101, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the last sentence.

84-2004. (2344.4) **Amount of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, shall be for the production years commencing on or after January 1, 1970 and for each production year thereafter, one dollar ($1), together with an additional sum or amount computed on the gross

value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates: the rate of tax shall be fifteen hundredths of one per cent (0.15 of 1%) of the first one hundred thousand dollars ($100,000) of the gross value of the product, five hundred seventy-five thousandths of one per cent (0.575 of 1%) of the amount by which such gross value of product exceeds one hundred thousand dollars ($100,000) and does not exceed two hundred and fifty thousand dollars ($250,000); eighty-six hundredths of one per cent (0.86 of 1%) of the amount by which such gross value of product exceeds two hundred and fifty thousand dollars ($250,000) and does not exceed four hundred thousand dollars ($400,000); one and fifteen hundredths per cent (1.15%) of the amount by which the gross value of product exceeds four hundred thousand dollars ($400,000) and does not exceed five hundred thousand dollars ($500,000) and one and four hundred thirty-eight thousandths per cent (1.438%) of the amount by which the gross value of product exceeds five hundred thousand dollars ($500,000).

History: En. Sec. 4, Initiative No. 28, 1925; amd. Sec. 1, Ch. 220, L. 1957; amd. Sec. 1, Ch. 176, L. 1959; amd. Sec. 1, Ch. 9, Ex. L. 1969; amd. Sec. 1, Ch. 392, L. 1971.

Amendments

The 1969 amendment added a proviso, applicable only to production years 1969 and 1970, which imposed a new tax of .15% on the first $100,000 of production and increased the rates from .5% to .575% on production between $100,000 and $250,000, from .75% to .86% on production between $250,000 and $400,000, from 1% to 1.15% on production from $400,000 to $500,000, and from 1.25% to 1.438% on production over $500,000.

The 1971 amendment made the 1969 rates permanent by inserting "for the production years commencing on or after January 1, 1970 and for each production year thereafter," by substituting the 1969 rates in the main portion of the section, and by deleting the proviso added by the 1969 amendment.

Effective Dates

Section 2 of Ch. 9, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 392, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-2005. (2344.5) **Statement of gross value of product.** Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state department of revenue not later than the fifteenth day of April. Such statement shall show the following:

1 to 3. * * * [Same as parent volume.]

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by

the statement and such other information as the state department of revenue may require.

5 and 6. * * * [Same as parent volume.]

History: En. Sec. 5, Initiative No. 28, 1925; amd. Sec. 102, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" twice in the preliminary clause and once near the end of subdivision 4.

84-2006. (2344.6) **Computation and notice of tax.** The state department of revenue shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said department shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p.m. on the thirtieth day of June, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925; amd. Sec. 1, Ch. 165, L. 1959; amd. Sec. 103, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-2008. (2344.8) **Procedure in case of failure to file statement.** If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state department of revenue, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any

state or county officer or board under any law of this state, and from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925; amd. Sec. 104, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in two places.

84-2009. (2344.9) **False or erroneous statements—investigation concerning.** (1) Should the state director of the department of revenue have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the director of revenue or his agent and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the director or any of his employees, or refusing to permit the director, or his employees to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the director, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the director shall change and correct the same so as to show the true gross value of product and shall reassess the amount of the license tax due from such person, and may add thereto a penalty of not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state department of revenue may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the director of revenue and testify concerning the gross mineral content of any such ore, or at the request of said director to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the director of revenue or his employees at any time or place that the director may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state department of revenue or shall refuse to appear before the director of revenue to testify concerning the gross mineral content of any such ore, or shall refuse to allow the director or his employees at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, 1925; amd. Sec. 72, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue, the director, and his agents and employees for references to the state board of equalization.

84-2010. (2344.10) **Hearing on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the state department of revenue under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the department as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days

after the date of notice thereof, required to be given to such person, file with the state tax appeal board a petition for a hearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department of revenue has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a hearing the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the state tax appeal board that the department of revenue has erred in any manner the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the department of revenue may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and reassess the amount of the license tax to be paid by such person, and give notice thereof in the manner required by section 84-2006.

History: En. Sec. 10, Initiative No. 28, 1925; amd. Sec. 73, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue and to the state tax appeal board for references to the state board of equalization; substituted "hearing" for "rehearing" in the middle of the first sentence; and substituted "present testimony" for "take testimony" in the final sentence.

84-2011. (2344.11) **Lien of tax.** The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state department of revenue and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 11, Initiative No. 28, 1925; amd. Sec. 105, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2012. (2344.12) **License.** Whenever any license tax is paid under the provisions of this act the state department of revenue shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

History: En. Sec. 12, Initiative No. 28, 1925; amd. Sec. 7, Ch. 14, L. 1941; amd. Sec. 106, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-2013. (2344.13) **Commencing business.** If any person shall, after the first day of January of any year, engage in or commence the carrying on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semiprecious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state department of revenue and the state treasurer of such fact.

History: En. Sec. 13, Initiative No. 28, 1925; amd. Sec. 107, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semiprecious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941; amd. Sec. 108, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 21—LICENSE TAXES—NATURAL GAS DISTRIBUTORS

Section

84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.
84-2104. Certificate to be filed with department—time for filing—contents of certificate.
84-2105. Records to be kept as required by department.
84-2106. Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by department—adjustment of excess payment or deficit.
84-2108. Department to determine tax if no statement filed—penalty and interest—collection of tax.

84-2102. (2408.2) **Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.** Every person engaged in or carrying on the business of distributing to consumers within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state for the purpose of use

outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to consumers within this state must, for the year beginning January 1, 1969, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to five hundred seventy-five thousandths (.575) of one (1) cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale; provided that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths (4/10) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to consumers.

History: En. Sec. 2, Ch. 180, L. 1933; amd. Sec. 1, Ch. 52, Ex. L. 1933; amd. Sec. 1, Ch. 205, L. 1957; amd. Sec. 1, Ch. 8, Ex. L. 1969; amd. Sec. 1, Ch. 325, L. 1971.

Amendments

The 1969 amendment inserted the following proviso: "provided, however, for the two taxable years commencing on or after January 1, 1969, the tax shall be computed at the rate of five hundred seventy-five thousandths (.575) of one cent for each one thousand (1,000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to consumers within this state, during such year, or conveyed through a pipeline to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale."

The 1971 amendment substituted "January 1, 1969" for "July 1, 1957"; increased the tax rate from ½¢ to .575¢ per thousand cubic feet; and deleted the proviso inserted by the 1969 amendment.

Effective Dates

Section 2 of Ch. 8, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Section 2 of Ch. 325, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2104. (2408.4) **Certificate to be filed with department—time for filing—contents of certificate.** Each and every person engaged in any such business in the state of Montana at the time when this act becomes effective must not, later than the thirtieth day of April, 1933, and every person who shall engage in any such business at any time after the date when this act becomes effective, immediately, upon engaging in any such business, file with the state department of revenue a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaged in carrying on such business in this state, giving the place or places of business and the location of the well or wells, plant or property, owned, leased, controlled or operated by such person in such business; the name and address of the managing agent in this state if an association, corporation, joint-stock company or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same, of an association, joint-stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 4, Ch. 180, L. 1933; amd. Sec. 109, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2105. (2408.5) **Records to be kept as required by department.** Every such person shall keep a record, in such form as the state department of revenue may require, of all natural gas extracted or produced, transported or carried, sold, furnished or delivered by such persons in this state and such records shall at all times during the business hours of the day, be subject to inspection of the state department of revenue, its members, agents or employees.

History: En. Sec. 5, Ch. 180, L. 1933; amd. Sec. 110, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2106. (2408.6) **Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by department—adjustment of excess payment or deficit.** (1) Each and every person must, within thirty (30) days after the quarterly period ending March 31, 1933, and within thirty (30) days after the end of each following quarterly period, make out, in duplicate, on forms prescribed by the state department of revenue, and deliver to the state treasurer, a statement showing the quantity of merchantable or marketable gas produced or extracted, transported or carried, sold, furnished or delivered by such person in the state of Montana during each month of each quarterly period and during the whole of said quarterly period, together with total amount due the state as license tax for such quarterly period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quar-

terly period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in or carrying on such business at more than one (1) place in this state, or owning, controlling or operating more than one (1) natural gas well or plant for the distribution of natural gas in this state, may include all thereof in one (1) statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him, the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, and the name and post-office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year.

(2) The state treasurer shall keep a book in such form as shall be approved by the state department of revenue, in which he shall enter such statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of natural gas license tax." The state treasurer shall within ten (10) days after the end of each month deliver over to the state department of revenue all statements filed with him and not already delivered to said department, and such statements shall then be filed in the office of, and become a part of the records of the state department of revenue.

(3) It shall be the duty of the state department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department shall be the taxes imposed, assessed against and payable by the person making the statement for the quarterly period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state department of revenue within ten (10) days after written notice of the amount of the deficiency shall be mailed by the state department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 180, L. 1933; amd. Sec. 111, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

84-2108. (2408.8) **Department to determine tax if no statement filed —penalty and interest—collection of tax.** If any such person shall fail, neglect or refuse to file any statement required by the provisions of this act within the time therein required, the state department of revenue shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of natural gas extracted and produced,

transported or carried, sold, furnished or delivered by such person in this state during such quarterly period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such quarterly period and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five (25) per cent thereof and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with penalty added thereto, and interest on the whole thereof at the rate of twelve (12) per cent per annum from the date of making such statement by the state department of revenue, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 180, L. 1933; amd. Sec. 112, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and end of the first paragraph.

CHAPTER 22—LICENSE TAXES—OIL PRODUCERS

Section
84-2202. Oil producers' license tax—amount—exceptions.
84-2203. Payment of tax.
84-2204. Determination of gross value of product.
84-2205. Producers to file reports.
84-2206. Record of product—carriers to furnish data.
84-2207. Statement to accompany payment—records—collection of tax—refunds.
84-2209. Procedure to compute and collect tax in absence of statement.

84-2202. (2398) **Oil producers' license tax — amount — exceptions.** Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year beginning July 1, 1957, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, computed at the following rates:

(a) Two and one-tenth per cent (2.1%) of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty (450) barrels.

(b) Two and sixty-five hundredths per cent (2.65%) of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of four hundred fifty (450)

barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil; in all leases establishing royalty interests entered into hereafter or in renewals of existing leases, or in division of proceeds orders, or by other contracts, such other owner or owners may agree with every person required to pay such tax that such other owner or owners will pay their prorata share of said tax, and that said prorata share may be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923; amd. Sec. 1, Ch. 221, L. 1957; amd. Sec. 1, Ch. 172, L. 1959; amd. Sec. 1, Ch. 359, L. 1969.

Amendments

The 1969 amendment substituted "two and one-tenths per cent (2.1%)" for "two per cent" in subdivision (a) and "two and sixty-five hundredths per cent (2.65%)" for "two and one-half per cent" in subdivision (b); and added subdivision (c).

Effective Date

Section 2 of Ch. 359, Laws 1969 read "This act is effective for all taxable years commencing after December 31, 1968."

Cross-References

Multistate tax compact, sec. 84-6701.

84-2203. (2399) **Payment of tax.** Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March

31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state department of revenue within thirty (30) days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R. C. M. 1921; amd. Sec. 2, Ch. 67, L. 1923; amd. Sec. 8, Ch. 14, L. 1941; amd. Sec. 113, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-2204. (2400) **Determination of gross value of product.** The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof produced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state department of revenue; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum or other mineral or crude oil from the said well to a tank or pipeline.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R. C. M. 1921; amd. Sec. 3, Ch. 67, L. 1923; amd. Sec. 114, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" immediately before the proviso.

84-2205. (2401) **Producers to file reports.** Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state department of revenue, a certificate and statement, on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the department may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R. C. M. 1921; amd. Sec. 4, Ch. 67, L. 1923; amd. Sec. 115, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2206. (2402) **Record of product—carriers to furnish data.** Every such person shall keep a record in such form as the state department of revenue may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection

by the state department of revenue, its members, agents, or employees. It shall be the duty of railroad companies, pipeline and transportation companies carrying crude or mineral oil, to furnish to the state department of revenue, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipeline, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred ($100.00) dollars for each day it shall fail to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R. C. M. 1921; amd. Sec. 5, Ch. 67, L. 1923; amd. Sec. 116, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2207. (2403) **Statement to accompany payment—records—collection of tax—refunds.** (1) Each and every person must, within thirty days after the quarter ending March 31, 1923, and within sixty (60) days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such sixty (60) days deliver such statement and pay to the department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The department of revenue shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department of revenue shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department of revenue within ten (10) days after written notice of the amount of the deficiency shall be mailed by the department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability.

History: En. Sec. 7, Ch. 266, L. 1921; re-en. Sec. 2403, R. C. M. 1921; amd. Sec. 6, Ch. 67, L. 1923; amd. Sec. 1, Ch. 449, L. 1973; amd. Sec. 117, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 449 and once by Ch. 516. Since the changes made by Ch. 516 were included in the changes made by Ch. 449, the compiler has set out the text of Ch. 449, above.

Amendments

Chapter 449, Laws of 1973, extended the quarterly filing date specified near the beginning of the section from thirty to sixty days after the end of the quarter; deleted "in duplicate" following "makeout" near the beginning of subsection (1); substituted references to the department of revenue for references to the state board of equalization and state treasurer throughout the section; deleted "and deliver to the state treasurer" following "on forms prescribed by the department of revenue" near the beginning of subsection (1); deleted former subsection (2) and redesignated subsection (3) as (2); deleted from subsection (2) a first sentence requiring the state treasurer to deliver statements to the board of equalization; inserted "applied as a credit against tax liability for subsequent quarters, or" in the last sentence of subsection (2); substituted "refunded if there is no subsequent tax liability" for "refunded to the person making such payment" at the end of subsection (2); and made minor changes in phraseology.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

Effective Date

Section 2 of Ch. 449, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

84-2209. (2405) **Procedure to compute and collect tax in absence of statement.** If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same. The twenty-five per cent penalty herein provided may be waived by the state department of revenue if reasonable cause for the failure and neglect to file the statement required by section 84-2207 is provided to the said department.

History: En. Sec. 9, Ch. 266, L. 1921; re-en. Sec. 2405, R. C. M. 1921; amd. Sec. 8, Ch. 67, L. 1923; amd. Sec. 1, Ch. 328, L. 1969; amd. Sec. 118, Ch. 516, L. 1973.

Amendments

The 1969 amendment added the last sentence.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

CHAPTER 23—LICENSE TAXES—SLEEPING CAR COMPANIES

Section
84-2301. Definitions.
84-2302. Reports.
84-2303. Assessment.
84-2304. Method of determining valuation.
84-2305. Notice of hearing concerning valuation—right to appear and be heard.
84-2306. License tax—amount—levy—notice—payment.
84-2307. Failure to report—nonpayment—action for collection.
84-2308. Estoppel—excusing failure to file report.
84-2309. First imposition of tax.

84-2301. (2315.1) **Definitions.** The term "department" when used in this act shall mean the state department of revenue.

Any person, persons, copartnership, joint-stock company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping car company for the purposes of this act.

History: En. Sec. 1, Ch. 64, L. 1923; amd. Sec. 119, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted the definition of "department" for a definition of "board."

84-2302. (2315.2) **Reports.** Every sleeping car company shall annually on or before the first day of March and in such forms and covering such period as the state department of revenue shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

(1) to (12). * * * [Same as parent volume.]

(13) Such other facts and information as such company or the state department of revenue may deem material upon the question of the true and full value of said property within this state. The department shall furnish forms upon which to make such reports.

History: En. Sec. 2, Ch. 64, L. 1923; amd. Sec. 120, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in the preliminary clause and subdivision (13).

84-2303. (2315.3) **Assessment.** The state department of revenue shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923; amd. Sec. 121, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-2304. (2315.4) **Method of determining valuation.** (1). * * * [Same as parent volume.]

(2) The department shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305.

History: En. Sec. 4, Ch. 64, L. 1923; amd. Sec. 122, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of subsection (2).

84-2305. (2315.5) **Notice of hearing concerning valuation—right to appear and be heard.** The department shall thereupon give notice to the officer of such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the department may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923; amd. Sec. 123, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-2306. (2315.6) **License tax—amount—levy—notice—payment.** The department shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one-half per cent (1½%) on the valuation thus found by it for the use of the state, and the department shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

History: En. Sec. 6, Ch. 64, L. 1923; amd. Sec. 124, Ch. 516, L. 1973.

Cross-References

Multistate tax compact, sec. 84-6701.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-2307. (2315.7) **Failure to report—nonpayment—action for collection.** (1) If any sleeping car company shall fail to make the report required of it by this act, the department shall proceed upon the best information it may be able to obtain to fix the valuation against such

company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) to (4). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 64, L. 1923; amd. Sec. 125, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in subsection (1).

84-2308. (2315.8) **Estoppel—excusing failure to file report.** (1) If any company described in section 84-2301 or its officers or agents shall unreasonably refuse or neglect to make any report required by law or by the said department, or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the department, except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the department, unless it shall have made and filed with the department a full and complete report of the facts and information prescribed by law, and called for by the department; provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the department on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the department and make full disclosure of all property liable to assessment and taxation under this act.

History: En. Sec. 8, Ch. 64, L. 1923; amd. Sec. 126, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" throughout the section.

84-2309. (2315.9) **First imposition of tax.** The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 84-2302 for the year 1922, and such report shall be made to the department by April first, 1923.

History: En. Sec. 9, Ch. 64, L. 1923; amd. Sec. 127, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the section.

CHAPTER 24—LICENSE TAXES—STORE LICENSE

Section
84-2401. Store license from department of revenue required.
84-2402. Application and fee for license.
84-2403. Department to consider application—issuance of license.
84-2404. Expiration and renewal of licenses.
84-2405. Retailers subject to act—license fees for.
84-2407. Wholesale store licenses.
84-2410. "Store" defined.
84-2412. Employment of help—disposal of license money.

84-2401. Store license from department of revenue required. That it shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state department of revenue, as hereinafter provided.

History: En. Sec. 1, Ch. 163, L. 1939; amd. Sec. 128, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

84-2402. Application and fee for license. Any person, firm, corporation, association, copartnership or group desiring to open, establish, operate or maintain a store in the state of Montana prior to September 1 of that calendar year shall apply to the state department of revenue for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state department of revenue, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state department of revenue may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store.

Each such application shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407.

History: En. Sec. 2, Ch. 163, L. 1939; amd. Sec. 1, Ch. 122, L. 1955; amd. Sec. 9, Ch. 121, L. 1965; amd. Sec. 1, Ch. 160, L. 1971; amd. Sec. 1, Ch. 240, L. 1973; amd. Sec. 129, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted from the end of the second paragraph a clause reading "but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank."

Chapter 240, Laws of 1973, deleted from the end of the third paragraph a reference to former section 84-2406; and made a minor change in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" three times in the first paragraph.

84-2403. Department to consider application—issuance of license. As soon as practicable after the receipt of any such application, the state department of revenue shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state department of revenue shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state department of revenue shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939; amd. Sec. 130, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-2404. Expiration and renewal of licenses. All licenses shall be so issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state department of revenue.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in sections 84-2405 and 84-2407.

All licenses shall lapse on December 31 of the year for which the license was issued, and if, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in sections 84-2405 and 84-2407.

History: En. Sec. 4, Ch. 163, L. 1939; amd. Sec. 2, Ch. 122, L. 1955; amd. Sec. 10, Ch. 121, L. 1965; amd. Sec. 2, Ch. 160, L. 1971; amd. Sec. 2, Ch. 240, L. 1973; amd. Sec. 131, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment substituted "thirty-first day of December of each calendar year" in the second sentence of the first paragraph for "first day of January of each year"; substituted "All licenses shall lapse on the thirty-first day of December of the year" at the beginning of the third paragraph for "No license shall lapse prior to the first day of March next following the year"; changed the application date specified in the third paragraph from March 1 to December 31; and inserted "for the calendar year next ensuing" in the third paragraph.

Chapter 240, Laws of 1973, deleted references to former section 84-2406 from the ends of the second and third paragraphs; and made minor changes in style.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization" twice in the first paragraph.

84-2405. Retailers subject to act—license fees for. Every person, firm, corporation, association, copartnership or group opening, establishing, operating or maintaining one (1) or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether the stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person,

firm, corporation, association, or copartnership or retailer under this act, but the units or members shall be taxed as individual units.

The license fee herein prescribed shall be paid annually.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be eleven dollars ($11).

2. Upon the second store, the annual license fee shall be fifty-six dollars ($56).

3. Upon the third store, the annual license fee shall be one hundred and six dollars ($106).

4. Upon the fourth store, the annual license fee shall be one hundred and fifty-six dollars ($156).

5. Upon the fifth store, and on each store in excess of five (5) stores, the annual license fee shall be two hundred and six dollars ($206).

History: En. Sec. 5, Ch. 163, L. 1939; amd. Sec. 11, Ch. 121, L. 1965; amd. Sec. 3, Ch. 240, L. 1973.

Amendments

The 1973 amendment deleted from the end of the first paragraph a proviso excluding businesses licensed under former section 84-2406; increased licensing fees in each category by five dollars; and made minor changes in style and phraseology.

84-2406. Repealed.

Repeal

Section 84-2406 (Sec. 6, Ch. 163, L. 1939; amd. Sec. 12, Ch. 121, L. 1965), relating to the business establishments required to procure licenses and the fees therefor, was repealed by Sec. 7, Ch. 240, Laws 1973.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of forty-three dollars and fifty cents ($43.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 for the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939; amd. Sec. 13, Ch. 121, L. 1965; amd. Sec. 4, Ch. 240, L. 1973.

Amendments

The 1973 amendment increased the tax on individual units from $38.50 to $43.50; and deleted a reference to former section 84-2406 near the end of the section.

84-2410. "Store" defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, copartnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405 and 84-2407. Vending machines shall not be considered as places of business per se and are not required to be licensed under the provisions of this act.

History: En. Sec. 10, Ch. 163, L. 1939; amd. Sec. 3, Ch. 160, L. 1971; amd. Sec. 5, Ch. 240, L. 1973.

Amendments

The 1971 amendment added the second sentence.

The 1973 amendment deleted a reference at the end of the first sentence to former section 84-2406.

84-2412. Employment of help—disposal of license money. The state department of revenue is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with five dollars ($5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest to the credit of the general fund.

History: En. Sec. 12, Ch. 163, L. 1939; amd. Sec. 1, Ch. 266, L. 1971; amd. Sec. 6, Ch. 240, L. 1973; amd. Sec. 132, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 240 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1971 amendment deleted "less the expenses incurred in the administration of this act" after "of this act" in the second sentence.

Chapter 240, Laws of 1973, inserted "with five dollars ($5) of the fee collected from each store license sold credited to an earmarked revenue fund for administration of the Unfair Practices Act by the department of business regulation and the rest" at the end of the second sentence.

Chapter 516, Laws of 1973, substituted "department of revenue" for "board of equalization."

Repealing Clause

Section 7 of Ch. 240, Laws 1973 read "Section 84-2406, R. C. M. 1947, is repealed."

CHAPTER 25—LICENSE TAXES—TELEGRAPH COMPANIES

Section
84-2502. Statement of gross income—contents—payment to accompany.
84-2503. Rules and regulations for enforcement may be adopted by department.
84-2505. Records to be kept as required by department.
84-2507. Department to determine tax in case no statement filed—penalty and interest —collection of tax—perfection and enforcement of tax lien.
84-2508. Books and records to be open to inspection by department.

84-2501. (2355.1) **Telegraph license tax, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-2502. (2355.2) **Statement of gross income—contents—payment to accompany.** Each and every person, association or corporation engaged in carrying on such business in this state, shall, within thirty (30) days after the end of each quarter, beginning with the quarter ending March 31, 1934, make out in duplicate and file with the state department of revenue, under oath, a statement in such form as the state department of revenue may require and prescribe, showing the total gross income of such person, association or corporation derived from business within this state including the transmission of telegraph messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telegraph messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within, this state and from those originating within, but terminating outside of, this state during the preceding quarter, and containing such other information as the state department of revenue may require; and shall accompany such statement

with the payment to the state department of revenue of a license tax in amount equal to two per cent (2%) of such gross income.

History: En. Sec. 2, Ch. 41, Ex. L. 1933; amd. Sec. 2, Ch. 157, L. 1935; amd. Sec. 133, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-2503. (2355.3) **Rules and regulations for enforcement may be adopted by department.** The state department of revenue shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 41, Ex. L. 1933; amd. Sec. 134, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-2505. (2355.5) **Records to be kept as required by department.** Each person, association or corporation shall keep a record in such form as the state department of revenue shall require showing the total gross receipts, as herein described, and such other information as the state department of revenue may require.

History: En. Sec. 5, Ch. 41, Ex. L. 1933; amd. Sec. 135, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2507. (2355.7) **Department to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.** (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state department of revenue, of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed with said department in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

(3). * * * [Same as parent volume.]

History: En. Sec. 7, Ch. 41, Ex. L. 1933; amd. Sec. 136, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" once near the beginning of subsection (1), and three times in subsection (2).

84-2508. (2355.8) **Books and records to be open to inspection by department.** The books and records of every person, association or corporation shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 41, Ex. L. 1933; amd. Sec. 137, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 26—LICENSE TAXES—TELEPHONE COMPANIES

Section
84-2601. Annual tax levied on gross income of telephone business.
84-2602. Statement and payment on gross income—certain business excluded.
84-2603. Department to adopt rules.
84-2605. Taxpayer to keep records.
84-2607. Department to levy tax on failure of taxpayer to make statement.
84-2608. Books of taxpayer open to inspection.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1969, there is hereby levied and shall be collected an annual tax of one and seven hundred twenty-five thousandths per cent (1.725%) of the gross income, in excess of two hundred fifty dollars ($250) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines or by microwave electronic equipment, in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; amd. Sec. 1, Ch. 41, L. 1947; amd. Sec. 1, Ch. 213, L. 1957; amd. Sec. 1, Ch. 7, Ex. L. 1969; amd. Sec. 1, Ch. 326, L. 1971.

Amendments

The 1969 amendment inserted a proviso increasing the rate of tax from 1½% to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting "1969" for "1957," changing the rates in the body of the section and deleting the proviso inserted by the 1969 amendment; and inserted "or by microwave electronic equipment."

Cross-References

Multistate tax compact, sec. 84-6701.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1969, make out in duplicate and file with the state department of revenue, under oath, a statement in such form as the state department of revenue may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside this state during the preceding quarter, and containing such other information as the state department of revenue may require; and shall accompany such statement with the payment to the state department of revenue of a license tax in the amount equal to one and seven hundred twenty-five thousandths per cent (1.725%).

History: En. Sec. 2, Ch. 94, L. 1937; amd. Sec. 2, Ch. 213, L. 1957; amd. Sec. 2, Ch. 7, Ex. L. 1969; amd. Sec. 2, Ch. 326, L. 1971; amd. Sec. 138, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "June 30, 1969" for "September 30, 1957" and added a proviso increasing the rate from 1½% to 1.725% for the two taxable years commencing on or after April 1, 1969.

The 1971 amendment made the 1969 increase permanent by substituting the 1969 tax rate in the body of the section and deleting the proviso added in 1969, and corrected a typographical error.

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

Effective Dates

Section 3 of Ch. 7, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19,1969.

Section 3 of Ch. 326, Laws 1971 read "This act is effective on April 1, 1971."

84-2603. Department to adopt rules. The state department of revenue shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 94, L. 1937; amd. Sec. 139, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-2605. Taxpayer to keep records. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state department of revenue shall require showing the total gross

receipts, as herein described, and such other information as the state department of revenue may require.

History: En. Sec. 5, Ch. 94, L. 1937; amd. Sec. 140, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-2607. Department to levy tax on failure of taxpayer to make statement. (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state department of revenue, of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed with said department in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains,

in the judgment of the state treasurer, sufficient property subject to said lien to ensure the payment of the whole of said unpaid license taxes, penalty and interest.

History: En. Sec. 7, Ch. 94, L. 1937; amd. Sec. 141, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" once near the beginning of subsection (1), and three times in subsection (2).

84-2608. Books of taxpayer open to inspection. The books and records of every person, association or corporation shall be open and subject to inspection by the state department of revenue or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 94, L. 1937; amd. Sec. 142, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 30—LICENSES—ITINERANT MERCHANTS

84-3006. Application for license—fee.

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 31—LICENSES—ITINERANT VENDORS

84-3101. (2429) **License of itinerant vendor of drugs, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 32—LICENSES—MISCELLANEOUS COUNTY

84-3201. (2434) **Billiard tables—pawnbrokers—theaters, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3202. (2435) **Railways acting as warehouses.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3203. (2436) **License of manufacturer of soft drinks.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3204. (2438) **Keeper of skating rink or merry-go-round.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3205. (2439) **Moving picture shows—amount of license.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3207. (2441) **Architects, builders, contractors, manufacturers.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3208. (2442) **Manufacturers of malt.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 34—LICENSES—PRODUCE WHOLESALERS

84-3402. (2443.2) **Produce wholesalers' license—who shall pay.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 35—LICENSES—PUBLIC CONTRACTORS

Section

84-3501. **Definitions.**
84-3503. State department of revenue as registrar.
84-3505. Classes of licenses—rights granted under licenses—fees.
84-3507. Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.
84-3508. Disposal of fees.
84-3510. Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.
84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds.
84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit.
84-3515. State department of revenue to establish rules and regulations.
84-3516. Failure to file contractor's license—penalty.

84-3501. (2433.1) **Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a). * * * [Same as parent volume.]

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state, with the federal government, state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars ($1,000).

(c). * * * [Same as parent volume.]

(d) "Gross receipts" means all receipts from sources within the state whether in the form of money, credits or other valuable consideration, received from, engaging in or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, and payments received

in final liquidation of accounts included in the gross receipts of any previous return made by the person.

History: En. Sec. 1, Ch. 178, L. 1935; amd. Sec. 1, Ch. 195, L. 1967.

Amendments

The 1967 amendment in subsection (b) inserted "for performing all public construction work in the state" after "into a contract"; inserted "federal government" before "state of Montana"; deleted "the construction or reconstruction" after "award contracts for"; and added subsection (d).

84-3503. (2433.3) **State department of revenue as registrar.** The state department of revenue of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions.

History: En. Sec. 3, Ch. 178, L. 1935; amd. Sec. 143, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-3505. (2433.5) **Classes of licenses—rights granted under licenses—fees.** (1) There shall be three (3) classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

(2) The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501 (b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars ($200).

(3) The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars ($50,000); and shall pay unto the registrar as a license fee the sum of one hundred dollars ($100) for such Class B license at the time of making application therefor.

(4) The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars ($25,000); and shall pay unto the registrar as a license fee the sum of ten dollars ($10) at the time of making application therefor.

(5) In addition to the fees enumerated above, each public contractor shall pay to the state an additional license fee in a sum equal to one per cent (1%) of the gross receipts from public contracts during the income year for which the license is issued; provided, however, that the additional license fee hereby imposed shall not be paid upon or collectible from the gross receipts from any public contract which has been let to bid, upon which bids have been awarded, or which has been executed by a public body and a public contractor on the effective date of this act.

(6) Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars ($1,000), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967.

Amendments

The 1967 amendment numbered the paragraphs in the old section, and inserted the present subsection (5) before the last paragraph of the old section, which is now numbered subsection (6).

Cross-References

Multistate tax compact, sec. 84-6701.

84-3507. (2433.7) **Bids to show bidder is licensed, is not presently working overtime on any incomplete contract, and class of bid.** All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder and is not presently working beyond the contract time, including authorized time extensions, on any previously awarded public contract project. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided, and unless the public contractor has completely executed any previous contract upon which he has worked beyond contract time.

History: En. Sec. 7, Ch. 178, L. 1935; amd. Sec. 3, Ch. 141, L. 1967.

Amendments

The 1967 amendment added "and is not presently working * * * on any previously awarded public contract project" at the end of the first sentence and added "and unless * * * he has worked beyond contract time" at the end of the second sentence.

84-3508. (2433.8) **Disposal of fees.** All moneys collected hereunder shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; amd. Sec. 2, Ch. 266, L. 1971.

Amendments

The 1971 amendment deleted the former first sentence requiring expenses to be paid from fees; and deleted "less the expense incurred in the administration of this act" after "collected hereunder."

84-3510. (2433.10) **Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.** Any person, firm, copartnership, corporation, association or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(1) to (3). * * * [Same as parent volume.]

(4) The making of any false statement in any application for a license or renewal thereof;

(5) The failure to comply with the provisions of section 82-1926 requiring preference of products manufactured or produced in this state by Montana industry and labor.

Upon the filing of such complaint the registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within twenty days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor, by serving upon the registrar a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; amd. Sec. 1, Ch. 219, L. 1969.

Amendments

The 1969 amendment inserted item (5).

84-3513. Retention of contract payments to pay assessments—transmittal to department of revenue—contractor to pay when funds not retained—refunds. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state department of revenue. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state department of revenue within thirty (30) days after the date on which the contractor receives each increment of payment for

work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state department of revenue at the end of the income year upon written application therefor.

History: En. Sec. 3, Ch. 195, L. 1967; amd. Sec. 144, Ch. 516, L. 1973.

Title of Act

An act providing for additional public contractors' license fees for all public construction work in Montana, defining terms, prescribing method of collection and disposition of fees, allowing a credit on corporation or income tax and personal property taxes paid in Montana by licensees on personal property used in licensees' contracting business, providing a penalty and an effective date; amending sections 84-3501 and 84-3505, R. C. M. 1947.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-3514. Corporate license tax credit—additional license fees—treatment of personal property tax as credit. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in Title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in Title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

History: En. Sec. 4, Ch. 195, L. 1967.

84-3515. State department of revenue to establish rules and regulations. The state department of revenue shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-3516. Failure to file contractor's license—penalty. A person failing to file a contractor's license return as provided and required by the state department of revenue, upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000).

History: En. Sec. 6, Ch. 195, L. 1967; amd. Sec. 146, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

Effective Date

Section 7 of Ch. 195, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

CHAPTER 37—LICENSES—TRANSIENT RETAIL MERCHANTS

84-3702. (2429.2) **Amount of license.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 38—LEVY OF TAXES

Section
84-3803. Rate of taxation fixed by state department.
84-3804. Increase of state tax levy—support units of university.
84-3806. Failure of county commissioners to levy.
84-3808. Tax on personal property lien on realty—separate assessment.

84-3801. (2147) **The levy.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-3803. (2149) **Rate of taxation fixed by state department.** The state department of revenue must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the state, after allowing twelve per cent for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R. C. M. 1921; amd. Sec. 147, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3713.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-3804. Increase of state tax levy—support units of university. Upon the approval of the electors of this state, to be determined by their vote at the general election to be held in November of 1968, the legislative assembly shall levy a property tax of not more than six (6) mills on the taxable value of all real and personal property each year for ten (10) years beginning with the year 1969. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system.

History: En. Sec. 1, Ch. 50, L. 1967. Referendum No. 65, approved at election Nov. 5, 1968; amd. Sec. 52, Ch. 100, L. 1973; amd. Sec. 74, Ch. 405, L. 1973.

Compiler's Notes

This section is substituted for Sec. 1, Ch. 218, Laws 1957 and given the same section number as it covers the same subject matter.

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. The amendments were identical.

Amendments

Both 1973 amendments deleted "in addition to any levy authorized by section 9, article XII of the Montana constitution" after "levy a property tax" in the first sentence.

Temporary Provision

Chapter 478, Laws of 1973, levied 6 mills for each of the years 1973 and 1974.

84-3806. (2151) **Failure of county commissioners to levy.** The action of the state department of revenue in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commis-

sioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R. C. M. 1921; amd. Sec. 148, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3715.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-3808. (2153) **Tax on personal property lien on realty—separate assessment.** (a) and (b). * * * [Same as parent volume.]

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county treasurer of said county a notice giving;

(1) to (6). * * * [Same as parent volume.]

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the department of revenue or its agent in the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the department of revenue or its agent of such request, it is hereby made the duty of the department of revenue or its agent to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; amd. Sec. 1, Ch. 97, L. 1937; amd. Sec. 75, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3717.

Amendments

The 1973 amendment deleted "in the office of the county assessor and" following "shall file" in the preliminary clause of subsection (c); and substituted references to the department of revenue or its agent for references to the county assessor in subsection (d).

CHAPTER 39—UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

(Repealed—Section 8, Chapter 228, Laws of 1967)

84-3901 to 84-3907. (2155.1 to 2155.7) **Repealed.**

Repeal

These sections (Secs. 1 to 7, Ch. 8, L. 1927), the Uniform Federal Tax Lien Registration Act, were repealed by Sec. 8, Ch. 228, Laws 1967. **For present law, see secs. 45-1501 to 45-1507.**

CHAPTER 40—COMPUTATION AND ENTRY OF TAXES

Section

84-4001. Department of revenue or its agent to enter valuations on assessment book.
84-4002. County clerk to prepare duplicate statement.
84-4003. Statement to be transmitted to state auditor and state department of revenue.
84-4004. County clerk to follow directions of state department of revenue, county or state tax appeal boards.

84-4005. Department of revenue or its agent to compute and enter taxes—affidavit.
84-4006. County clerk's affidavit—delivery of book to department of revenue or its agent.
84-4013. State department of revenue may dispense with duplicate.

84-4001. (2156) **Department of revenue or its agent to enter valuations on assessment book.** Before delivering the assessment book to the county clerk as required by section 84-505 the department of revenue or its agent must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

History: En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1943; amd. Sec. 76, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3727.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor."

84-4002. (2157) **County clerk to prepare duplicate statement.** The county clerk must, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements, showing in separate columns:

1 to 6. * * * [Same as parent volume.]

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R. C. M. 1921; amd. Sec. 149, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3728.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "board of county commissioners" in the preliminary paragraph.

84-4003. (2158) **Statement to be transmitted to state auditor and state department of revenue.** The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state department of revenue.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R. C. M. 1921; amd. Sec. 49, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3729.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-4004. (2159) **County clerk to follow directions of state department of revenue, county or state tax appeal boards.** As soon as the county clerk receives from the state department of revenue, county or state tax appeal boards a statement of any change or changes made by the department or boards in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the county tax appeal board which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession

of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county or state officer then having possession of such assessment books, and it shall be the duty of such county or state officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1929; amd. Sec. 78, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3730.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; inserted references to the county and state tax appeal boards; substituted "county tax appeal board" for "board of county commissioners" before "which is prohibited by section 84-413" near the middle of the section; and inserted "or state" after "county" twice near the end of the section.

84-4005. (2160) **Department of revenue or its agent to compute and enter taxes—affidavit.** The department of revenue or its agent must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and the columns of total value of property in the county, and shall attach thereto his affidavit, by him subscribed as follows:

"I, ..., an agent of the department of revenue do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1943; amd. Sec. 79, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3731.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and deleted "as corrected under the direction of the county and state board of equalization" after "total value of property in the county" near the end of the preliminary paragraph.

84-4006. (2161) **County clerk's affidavit—delivery of book to department of revenue or its agent.** That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I, ..., county clerk of the county of ....., do swear that I received the assessment book of the taxable property of the county from the department of revenue or its agent with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state tax appeal boards," and deliver the book to the department of revenue or its agent.

History: En. Sec. 90, p. 107, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R. C. M. 1921; amd. Sec. 9, Ch. 96, L. 1923; amd. Sec. 2, Ch. 167, L. 1943; amd. Sec. 80, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3732.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" in two places; and substituted "tax appeal board" for "board of equalization" at the end of the affidavit.

84-4013. (2168) **State department of revenue may dispense with duplicate.** The state department of revenue may, by an order certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original assessment book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895; re-en. Sec. 2737, Rev. C. 1907; re-en. Sec. 2168, R. C. M. 1921; amd. Sec. 81, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization"; and deleted "entered upon its minutes" following "by an order" near the beginning of the sentence.

CHAPTER 41—COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES—REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

Section
84-4130. Lien of state when vests in purchaser—how alone divested.
84-4191. Terms of sale—sale contract—deed of conveyance.

84-4116. (2181) **Statement to be transmitted to the state board of equalization by the county clerk.**

History: En. Sec. 106, p. 109, L. 1891; re-en. Sec. 3872, Pol. C. 1895; re-en. Sec. 2328, Rev. C. 1907; re-en. Sec. 2181, R. C. M. 1921; amd. Sec. 7, Ch. 96, L. 1923; amd. Sec. 150, Ch. 516, L. 1973. Cal. Pol. C. Sec. 3763.

Compiler's Notes

Section 150, Ch. 516, Laws of 1973 purported to amend this section but made no change. For section, see parent volume.

84-4130. (2197) **Lien of state when vests in purchaser—how alone divested.** On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and two-thirds (2/3) of one per cent additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921; amd. Sec. 1, Ch. 8, L. 1967.

Amendments

The 1967 amendment inserted "two-thirds (2/3) of" preceding "one per cent additional."

Extent of Lien

This section does not permit mortgagee who had previously purchased certificates of tax sale to retain a lien upon the real estate for the amount of certificates after sheriff's sale. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted the mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

84-4132. (2201) **Time for redemption.**

References

United States v. Johnston, 247 F Supp 707.

84-4133. (2202) **Redemption to be made in lawful money, etc.**

Check as "Lawful Money"

Use of a check by the small business administration in the redemption of tax delinquent property by the United States constituted "lawful money" under this section and certificate of redemption issued to the government four days before defendant filed application for tax deed was valid. United States v. Johnston, 247 F Supp 707.

84-4154. (2210) **Redemption from tax sales.**

References

United States v. Johnston, 247 F Supp 707.

84-4191. Terms of sale—sale contract—deed of conveyance. Such sale shall be made for cash or, in the case of real property, on such terms as the board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of eight per cent (8%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may in the discretion of the board of county commissioners reserve not to exceed six and one-fourth per cent (6-¼%) royalty interest in the oil, gas, other hydrocarbons and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941; amd. Sec. 1, Ch. 187, L. 1949; amd. Sec. 1, Ch. 163, L. 1969.

Amendments

The 1969 amendment increased the deferred payment interest rate from "four per cent (4%)" per annum to "eight per cent (8%)."

Effective Date

Section 2 of Ch. 163, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 28, 1969.

Mineral Rights Reservation

County has implied power under proviso of this section to make mineral reservation in deeds to tax-title lands sold by it. Smith v. County of Musselshell, 155 M 376, 472 P 2d 878.

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. Superior Oil Co. v. Vanderhoof, 307 F Supp 84.

84-4196. Confirmation of oil and gas leases heretofore made.

Reservation of Royalty Interest

In action to determine rights under deed, evidence that all parties to county's deed regarded reservation in deed as royalty interest and not mineral interest and language in deeds that "all minerals contained in and hereafter mined, produced, extracted, or otherwise taken" supported finding that such reservation was royalty interest. Superior Oil Co. v. Vanderhoof, 307 F Supp 84.

CHAPTER 42—COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN ON REAL ESTATE—ROAD AND POOR TAXES

Section
84-4201. Duty of department of revenue or its agent.
84-4202. Duty of treasurer.
84-4211. Department of revenue or its agents to note report of property.

84-4201. (2238) **Duty of department of revenue or its agent.** It shall be the duty of the department of revenue or its agent, upon discovery of any personal property in the county, the taxes upon which are not a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property in such a definite manner that the treasurer can identify the same, the amount and assessed valuation of such property, where the same is located, the amount of taxes due thereon, and the name and address of the owner, claimant, or other person in possession of the same. Where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer. For the purpose of determining the taxes due on such personal property, the department or its agent must use the levy made during the previous year.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 24, L. 1925; amd. Sec. 1, Ch. 143, L. 1929; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943; amd. Sec. 1, Ch. 23, L. 1951; amd. Sec. 82, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3820.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" near the beginning of the first sentence and in the third sentence; and deleted "in his opinion" before "a lien upon real property" near the beginning of the first sentence.

84-4202. (2239) **Duty of treasurer.** The county treasurer must collect taxes on all personal property, and in the case provided in the preceding section, it shall be the duty of the treasurer immediately upon receipt of the report prescribed by section 84-4201, R. C. M. 1947, to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must, at the time of receiving the report, and in any event within thirty (30) days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed, or any other personal property in the hands of the delinquent taxpayer, and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, direct the sheriff to make such levy and sale, and the sheriff, undersheriff, or any deputy sheriff of such county is, ex officio, a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. Such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the

willful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any or all of the methods herein provided for may be used until the full amount of such tax is collected.

The county shall have a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer, for any amounts due said county for any delinquent personal property taxes not a lien on real estate, of said taxpayer; provided, however, that due notice must be given the lien holder, if any.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, ch. 107, L. 1939; amd. Sec. 2, Ch. 23, L. 1951; amd. Sec. 1, Ch. 166, L. 1955; amd. Sec. 1, Ch. 165, L. 1963; amd. Sec. 83, Ch. 405, L. 1973. Cal. Pol. C. Sec. 3821.

Amendments

The 1973 amendment substituted "report prescribed by section 84-4201, R. C. M. 1947," for "report from the assessor" near the end of the first sentence in the first paragraph; and deleted "assessor's" following "at the time of receiving the" near the beginning of the second sentence in the first paragraph.

84-4211. (2251) **Department of revenue or its agent to note report of property.** The department of revenue or its agent must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R. C. M. 1921; amd. Sec. 84, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "assessor" at the beginning of the section.

CHAPTER 44—SETTLEMENT WITH STATE AUDITOR AND TREASURER

84-4403 to 84-4405. (2265 to 2267) **Repealed.**

Repeal

These sections (Secs. 4000 to 4002, Pol. C. 1895), relating to examination of tax collectors' books, were repealed by Sec. 23, Ch. 249, Laws 1967.

CHAPTER 45—PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

Section
84-4502. Payment of taxes under protest—action to recover.
84-4503. Assessment for taxation—increase over statement of owner.

84-4502. (2269) **Payment of taxes under protest—action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public

revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state department of revenue, which shall be served with summons and copy of the complaint, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2). * * * [Same as parent volume.]

History: Ap. p. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the first sentence of subsection (1).

84-4503. (2270) **Assessment for taxation—increase over statement of owner.** Whenever any person has delivered to the department of revenue or its agent a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the department or its agent shall increase such estimated value, or add other property to such assessment list, the agent shall, at least ten days prior to the meeting of the county tax appeal board, give to such person written notice of such change which notice shall be substantially in the following form:

(Date) .....

Mr. .....

A change has been made in your assessment list as follows:
(Set out and describe specifically changes made in list.)

....., Agent

Department of Revenue

Such person may then appear before the county tax appeal board and contest the same; and if the assessment of any such person has been added to or changed, either by the department of revenue or by the county tax appeal board, and such person has not been notified thereof and given an opportunity to contest the same before the county tax appeal board, the tax on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county tax appeal board and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state tax appeal board from any action or decision with reference thereto by the county tax appeal board and such person is aggrieved at the final action of the state tax appeal board in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state tax appeal boards, and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925; amd. Sec. 85, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and substituted references to the county and state tax appeal boards for references to the county and state boards of equalization.

CHAPTER 46—BANKS—TAXATION

Section
84-4604. Statements to be furnished by officers.
84-4605. Taxation of banks and shares of stock in.
84-4606. Banks with offices in more than one county—assessment and apportionment of tax.

84-4604. (2066) **Statements to be furnished by officers.** The cashier of every national bank shall make and deliver to the department of reve-

nue or its agent in the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the department of revenue or its agent shall forthwith obtain said information from the officers of the bank and for this purpose shall have access to the books of the bank, and the department or its agent shall therefor make an assessment of such stock, which shall be as fair and equitable as can be made from the best information available, or the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports, may be adopted.

History: En. Sec. 3, Ch. 81, L. 1921; re-en. Sec. 2066, R. C. M. 1921; amd. Sec. 86, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and made minor changes in phraseology.

84-4605. (2067) **Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the department of revenue or its agent in the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the department or its agent shall forthwith obtain such information from any other available source, and for this purpose shall have access to the books of such bank, banking corporation or private banker. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as can be made from the best information available or, for the purpose of said assessment the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law may be adopted. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2). * * * [Same as parent volume.]

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the department or its agent, upon demand, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the department or its agent may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

History: En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1927; amd. Sec. 87, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor; and made minor changes in style and phraseology.

84-4606. Banks with offices in more than one county—assessment and apportionment of tax. Any state or national bank, banking corporation, or private bank, the stock, moneyed capital, or moneys and credits of which are subject to taxation under the provisions of chapter 3 and chapter 46, Title 84, Revised Codes of Montana, 1947, and which has banking offices in more than one (1) county, shall furnish to the department of revenue or its agent in each such county the information required of it by chapter 46, Title 84, Revised Codes of Montana, 1947, together with a statement of the book value of real estate owned and located in the respective counties and a statement of the deposit liability shown by the books of account of said bank at each of its said banking offices at the close of business the day next preceding the first Monday in March; and the aggregate tax on the stock, moneyed capital, and moneys and credits of such bank computed as provided by law shall be assessed by and be paid to the respective counties in the proportion which the amount of the deposit liability shown on the books of the office or offices of such bank located in such counties, respectively, shall bear to the total deposit liability of such bank.

History: En. Sec. 1, Ch. 72, L. 1967; amd. Sec. 88, Ch. 405, L. 1973.

Title of Act

An act relating to the assessment for

the purpose of taxation of bank stock, moneyed capital, and moneys and credits, in each county wherein a bank office is located and the payment of taxes thereon; providing for the furnishing of certain information to the county assessor of each such county by the bank officials and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor.

Repealing Clause

Section 2 of Ch. 72, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 72, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

CHAPTER 47—CITIES AND TOWNS—TAXATION AND LICENSE

Section
84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.
84-4701.1. All-purpose levy authorized.
84-4701.2. Maximum rate of all-purpose levy.
84-4701.3. Allocation of all-purpose levy.
84-4701.5. Certification of all-purpose levy to county officers.
84-4701.6. Extraordinary levies—additional to all-purpose levy.
84-4713. Taxes in cities and towns which have exceeded the statutory limit of indebtedness.
84-4715. Annual tax—levy and collection.
84-4716. Levy, etc., to be made under this chapter.
84-4717. Basis of taxation.
84-4718. Duty of department of revenue.
84-4719. Copies of assessment books to be furnished cities and towns.
84-4720. Charge of department for making copies.
84-4721. Equalization of taxes.
84-4726.1. Municipal sewer rates—collection—arrearages.

84-4701. (5194) **Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.** The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities and towns must not exceed two and four-tenths (2.4%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council or commission in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of procuring, equipping and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums and combinations thereof, the council or commission in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding seven (7) mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1. Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945; amd. Sec. 1, Ch. 192, L. 1951; amd. Sec. 1, Ch. 230, L. 1969. Cal. Pol. C. Sec. 4371.

Amendments

The 1969 amendment substituted "two and four-tenths (2.4%) per centum" for "two (2%) per centum" after "must not exceed" near the beginning of the section, and "seven (7) mills" for "six (6) mills"

after "not exceeding" near the end of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

Allocation of Construction Cost

City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of costs among various city departments using the facility. Greener v. City of Great Falls, 157 M 376, 485 P 2d 932.

84-4701.1. All-purpose levy authorized. It is the purpose of this act to authorize and empower the cities and towns of the state of Montana, at their option, to make an all-purpose annual mill levy in lieu of the multiple levies now authorized by the statutes of the state of Montana. The all-purpose mill levy shall not include the levies imposed for bonded indebtedness, to pay judgments, or special improvement district revolving funds of municipalities, which levies may be made in addition to the all-purpose levy as provided in section 84-4701.6, R. C. M., 1947. This act shall not be construed as repealing those statutes providing for multiple separate levies.

History: En. Sec. 1, Ch. 82, L. 1965; amd. Sec. 1, Ch. 226, L. 1969; amd. Sec. 1, Ch. 375, L. 1971.

Amendments

The 1969 amendment deleted "exclusive" before "annual mill levy"; and inserted the second sentence.

The 1971 amendment inserted "or special improvement district revolving funds of municipalities" in the second sentence and made minor changes in phraseology.

84-4701.2. Maximum rate of all-purpose levy. Notwithstanding the provisions of the statutes of Montana to the contrary, the cities and towns of the state of Montana may make an all-purpose annual levy upon the assessed value of all the taxable property in such cities and towns, for municipal purposes in lieu of the multiple levies now authorized by statute. The total of such all-purpose levy shall not exceed sixty-five (65) mills on the dollar, which levy shall not include any levies necessary for bonded indebtedness, judgments, or special improvement district revolving in addition to all-purpose levy as provided in sections 84-4701.1 and 84-4701.6. The moneys received from such all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

An amount not to exceed five per centum (5%) of the moneys received from and as a part of the all-purpose levy aforesaid may be placed in a separate fund known as the capital improvement program fund to be earmarked for the replacement and acquisition of property, plant or equipment costing in excess of five thousand dollars ($5,000) with a life expectancy of five (5) years or more; provided that a capital improvement program has been formally adopted by city or town ordinance.

The moneys held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and credited back to the fund plus interest earned.

History: En. Sec. 2, Ch. 82, L. 1965; amd. Sec. 2, Ch. 226, L. 1969; amd. Sec. 2, Ch. 375, L. 1971.

Amendments

The 1969 amendment substituted "an all-purpose annual levy" for "an all-purpose and exclusive annual levy which

does not exceed the average number of mills on the dollar levied for all purposes in the preceding three (3) years"; and added the second sentence.

The 1971 amendment substituted "all-purpose" for "multiple" in the second sentence of the first paragraph; increased the maximum levy specified in the second sentence of the first paragraph from 60 to 65 mills; inserted "or special improvement district revolving" in the second sentence of the first paragraph; added the last sentence to the first paragraph; added the second and third paragraphs; and made minor changes in phraseology.

84-4701.3. Allocation of all-purpose levy. In the event the all-purpose levy method, provided for in section 84-4701.2, is followed in municipal financing, any municipality following it shall appropriate the levy to the several departments of the municipality in its annual budget and appropriation ordinance, or in other legal manner, as the governing body of such municipality shall deem best.

History: En. Sec. 3, Ch. 82, L. 1965; amd. Sec. 3, Ch. 375, L. 1971.

Amendments

The 1971 amendment substituted "appropriate" for "allocate"; and deleted "on a mill basis" after "the levy."

84-4701.5. Certification of all-purpose levy to county officers. In the event that it is necessary to certify such a municipal levy to county officers for collection, the same shall be certified as an all-purpose levy.

History: En. Sec. 5, Ch. 82, L. 1965; amd. Sec. 4, Ch. 375, L. 1971.

Amendments

The 1971 amendment substituted "an all-purpose levy" for "a single levy for general fund purposes" at the end of the section.

84-4701.6. Extraordinary levies—additional to all-purpose levy. That otherwise authorized extraordinary levies to pay for bonded indebtedness, judgments, or special improvement district revolving funds may be made by such municipalities in addition to such all-purpose levy provided in sections 84-4701.1, 84-4701.2, 84-4701.3, 84-4701.4 and 84-4701.5 of the Revised Codes of Montana, 1947.

History: En. 84-4701.6 by Sec. 1, Ch. 145, L. 1967; amd. Sec. 5, Ch. 375, L. 1971.

Title of Act

An act to provide for authorized extraordinary levies to service and pay bonded indebtedness of such municipalities and to pay judgments obtained against them, may be made by such municipalities in addition to such all-purpose levy; and repealing all acts and parts of acts in conflict herewith.

Amendments

The 1971 amendment inserted "or special improvement district revolving funds" and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 145, Laws 1967 repealed all acts and parts of acts in conflict therewith.

84-4712. (5200) **Special taxes and assessments.**

Compiler's Notes

Sections 44-301 to 44-303, referred to in this section in the parent volume, were repealed by Sec. 12, Ch. 260, Laws 1967.

84-4713. (5201) **Taxes in cities and towns which have exceeded the statutory limit of indebtedness.** All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided

in statute, may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925; amd. Sec. 53, Ch. 100, L. 1973; amd. Sec. 89, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Since the amendments conflict, the compiler has used the language in Ch. 405, the later enactment.

Amendments

Chapter 100, Laws of 1973, substituted "five per cent (5%) of the value of the taxable property therein" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

Chapter 405, Laws of 1973, substituted "the limit provided in statute" for "the limit provided in section 6, article XIII of the constitution" in the first sentence.

84-4715. (5203) **Annual tax—levy and collection.** The council has power to levy, and collect, annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921; amd. Sec. 90, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "equalize" after "collect"; and deleted "assessment, equalization" following "provide for the levy."

84-4716. (5204) **Levy, etc., to be made under this chapter.** Until the passage of such ordinance the levy and collection of municipal taxes are, and the proceedings for such purposes must be as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921; amd. Sec. 91, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "assessment, equalization," following "the levy"; and made a minor change in punctuation.

84-4717. (5205) **Basis of taxation.** The assessment made by the department of revenue or its agent for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921; amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor."

84-4718. (5206) **Duty of department of revenue.** It is the duty of the department of revenue or its agent, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in cities and towns within each county in the state.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895; re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921; amd. Sec. 93, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor"; and substituted "each county in the state" for "the county" at the end of the sentence.

84-4719. (5207) **Copies of assessment books to be furnished cities and towns.** On or before the second Monday in July of each year the department or its agent must furnish to all cities of the third class and towns within each county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of the assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911; re-en. Sec. 5207, R. C. M. 1921; amd. Sec. 94, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department or its agent" for "assessor"; and made minor changes in phraseology.

84-4720. (5208) **Charge of department for making copies.** The department may charge such cities and towns five cents per folio of one hundred words for each copy of the assessment book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911; re-en. Sec. 5208, R. C. M. 1921; amd. Sec. 95, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "assessor"; and made a minor change in phraseology.

84-4721. (5209) **Equalization of taxes.** The equalization of assessments of property made by the state department of revenue applies to the assessment of property in any city or town, and must be taken as the equalization thereof.

History: En. Sec. 4865, Pol. C. 1895; re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 5209, R. C. M. 1921; amd. Sec. 96, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "state department of revenue" for "county board of equalization"; and deleted a second sentence authorizing the reduction or refunding of city or town taxes.

84-4726.1. Municipal sewer rates—collection—arrearages. The council of any city or town operating a municipal sewer system may fix by ordinance the rates for service charges in advance or otherwise. The rates shall be uniform for like service in all parts of the municipality and shall be as nearly as possible equitable in proportion to the services and benefits rendered. An original charge for the connecting sewer line between the lot line and the sewer main may be assessed when such connecting sewer line is installed. The charges shall be collected by the treasurer.

On or before January 15 of each year, notice shall be given by the city or town treasurer to the owners of all lots or parcels of real estate to which sewer service has been furnished prior to January 1, by the city or town, and said notice shall specify the assessment owing and in arrears at the time of giving such notice. Such notice shall be in writing and shall state the amount of such arrearage, including any penalty and interest

assessed pursuant to the provisions of the city or town ordinance; that unless the same is paid by July 1 thereafter, the same will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent as above specified. Such notice may be delivered to such owner personally, or by letter addressed to such owner at the post-office address of such owner as recorded in the office of the county assessor.

On March 1, the treasurer of the city or town shall certify and file with the county assessor a list of all lots or parcels of real estate, giving the legal description thereof, to the owners of which notices of arrearage in payments were given as above specified and which arrearage still remain unpaid, and stating the amount of such arrearage, including any penalty and interest. The county assessor shall insert the same as a tax against such lot or parcel of real estate. Provided, that in cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall insert such delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

History: En. 84-4726.1 by Sec. 1, Ch. 411, L. 1973.

Title of Act

An act providing for collection of service charges by cities and towns operating a municipal sewer system; giving of notice to owners of real estate of delinquency in payment of service charges; and certification to the county assessor of real estate upon which service charges remain unpaid; and adding a new section 84-4726.1, R. C. M. 1947.

84-4732 to 84-4735. (5219 to 5222) **Repealed.**

Repeal

Sections 84-4732 to 84-4735 (Sec. 436, 5th Div. Comp. Stat. 1887; Secs. 4875 to 4878, Pol. C. 1895; Sec. 1, pp. 224, 225, L. 1897; Sec. 1, Ch. 47, L. 1937), relating to the road poll tax, were repealed by Sec. 120, Ch. 405, Laws 1973.

CHAPTER 48—FREIGHT LINE COMPANIES—TAXATION

Section
84-4818. Definitions.
84-4819. Rate of tax—situs.
84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis.
84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report.
84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit.
84-4823. Penalty for nonpayment by railroad company.
84-4824. Actions to recover delinquent taxes and penalties—additional taxes.
84-4825. Disposition of moneys—limitation of actions.
84-4826. Failure to file report—estoppel to impeach department of revenue's determination.

84-4818. Definitions. The following words and phrases, when used in this act, shall have the following definitions:

(a). * * * [Same as parent volume.]

(b) Department. The term "department" shall mean the state department of revenue of the state of Montana.

(c). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 137, L. 1949; amd. Sec. 152, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (b) for a subdivision defining "board" as the state board of equalization.

84-4819. Rate of tax—situs. Every such freight line company shall pay annually for each calendar year a sum in the nature of a tax in the amount of five and one-half per cent (5-½%) of the total gross earnings received from all sources by reason of the use or operation of such cars within this state by such freight line company, which shall be in lieu of all other taxes upon such property of any freight line company so paying the same; provided, for the purpose of taxation, all cars used exclusively within the state or used partially within and partially without the state, are hereby declared to have situs within the state, the value thereof for such taxation to be determined as provided for in this act.

History: En. Sec. 2, Ch. 137, L. 1949; amd. Sec. 1, Ch. 346, L. 1969.

Amendments

The 1969 amendment raised the tax rate from "five per cent (5%)" to "five and one-half per cent (5½%)" per year.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4820. Railroad companies to withhold tax, file statements annually and remit to state—receipts—investigations—ad valorem tax basis. Every railroad company so using or leasing said cars, upon payment therefor to such company shall withhold from such payment five and one-half per cent (5-½%) of as much thereof as shall constitute gross earnings of such freight line company within this state. On or before March 1, 1970, such railroad company shall make and file with the department a consolidated statement in a form to be prescribed by the department of revenue, showing the amount of such payments for the next preceding calendar year ending December 31, 1969, and the amounts so withheld and due the state of Montana. A like report shall be made on or before March 1 of each year thereafter; provided, however, that for good cause the department may grant a reasonable extension for filing, but not to exceed thirty (30) days. Such railroad company at the time of filing such statement shall remit the amounts so withheld and due the state of Montana. Upon receipt of such payment, the department shall issue its receipt, in triplicate, one (1) copy of which shall be mailed to such railroad company, one (1) to the freight line company for which such tax is paid, and one (1) to be retained in the office of the state department of revenue. The mailing of such receipt to such freight line company shall constitute notice of the filing of said statement and payment of said tax. If any railroad company shall fail to make or file such report, or if the state department of revenue be dissatisfied with any report filed, the department of revenue shall have the power to conduct a hearing and investigation for the purpose of ascertaining from whatever sources to which it has access, the gross earnings of such freight line company from the use or operation of such cars within the borders of this state, and in conducting such hearing and investigation, the department of revenue shall have power, by subpoena, to require officers, agents, employees or

receivers of such railroad company, or of such freight line company, to attend before the state department of revenue, and to bring with him, or them, for inspection by the department, any books, papers, or documents in his or their possession, or under his or their control, in any manner affecting said tax, and to testify under oath concerning any matter relating to the organization or business of such freight line company within this state. Any person who shall fail, neglect or refuse to attend before the department, when subpoenaed so to do, or who shall fail, neglect, or refuse to bring with him and submit for inspection by the department any books, papers, or documents in his possession or under his control affecting the organization or business of such freight line company within this state, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000), or be imprisoned in the county jail for not less than thirty (30) days nor more than six (6) months. Every freight line company, as hereinbefore defined, shall be liable for the payment of the difference, if any, between five and one-half per cent (5½%) of all gross earnings in this state and the amounts withheld and remitted to the state of Montana by railroads, and shall be liable for the payment of any additional taxes which the department may find due under its authority to raise or lower the rate to conform to the taxes which would be payable if the cars were taxed on an ad valorem basis.

History: En. Sec. 3, Ch. 137, L. 1949; amd. Sec. 2, Ch. 346, L. 1969; amd. Sec. 1, Ch. 339, L. 1971; amd. Sec. 153, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "five and one-half per cent (5½%)" for "five per cent (5%)" in the first and last sentences; and in the second sentence, substituted "1970" for "1950" and "1969" for "1949."

The 1971 amendment added the proviso to the third sentence; and made minor changes in phraseology and style.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 3 of Ch. 346, Laws 1967 read "This act is effective for all taxable years commencing after December 31, 1968."

Section 2 of Ch. 339, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4821. Notice of incorrectness or insufficiency—procedure upon failure to file report. Upon the filing of the reports herein provided for, the department shall compute and determine the amount of the tax, and on or before May 1st, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient and such railroad company shall be liable for any additional tax found to be owing the state of Montana. If no report be filed as herein required, the department shall, on or before May 1st, ascertain from whatever sources to which it has access the gross earnings of such freight line company within this state from the use or operation of such cars by such railroad company; or if the gross earnings are not capable of being ascertained, the department may estimate the gross earnings of such freight line company within this state from such railroad company and the railroad

company which failed to make the report or pay the tax shall be liable for the same together with penalties as hereinafter provided.

History: En. Sec. 4, Ch. 137, L. 1949; amd. Sec. 154, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-4822. Ad valorem tax basis—complaints—notice—testimony—hearing—refunds—valuation of cars as unit. It is hereby declared to be the intention of the legislature that the tax herein imposed be not greater than the amount of tax such freight line company would pay if its cars were taxed on an ad valorem basis. No tax other than as in this act imposed shall be assessed against the business or income of any such freight line company. Any such freight line company or railroad company, on or before June 1st of the year in which the tax herein imposed has been paid, may file written complaint with the state tax appeal board concerning the correctness of the rate used, or the correctness of the amount of the tax imposed, or any other matter affecting the complainant under the provisions of this act. Upon filing such complaint, the state tax appeal board shall set the same for hearing, and shall give written notice thereof to the complainant at least ten (10) days before the date set for hearing thereon. Upon the hearing of any such complaint, the state tax appeal board shall take testimony to determine whether the amount of the tax, as computed and determined by the department of revenue, is greater than the general ad valorem tax for all purposes would be on the cars of such freight line company subject to taxation in Montana, if assessed and taxed on an ad valorem basis. In such cases the state tax appeal board shall have the power, and it shall be its duty, to lower or raise the rates herein specified to conform to the facts disclosed at such hearing and to make the amount of the tax due equivalent to such ad valorem tax. If the state tax appeal board shall then determine that the amount of the tax imposed and collected was excessive, the claimant shall be entitled to a refund to the extent of such excess. Within six (6) months after such determination the claimant may present to the state department of revenue a sworn claim for such refund, setting forth the amount thereof. The state auditor shall draw his warrant upon the state treasurer for the amount of such claim and the same shall be paid out of the freight line company tax fund created by this act, in the same manner as other claims against the state are paid. In order to determine the amount of tax such freight line company would pay, the department may value all cars of any such company as a unit and allocate to Montana that proportion of the total value which the Montana car mileage bears to the total car mileage of the cars of any such freight line company during the twelve (12) months' period ending December 31 of the preceding year, and may then apply to such value, the average total rate of all general property taxes levied for the preceding year by the taxing authorities of the state, counties, school districts, municipalities and other taxing subdivisions for state, county, school and muncipal and other purposes.

History: En. Sec. 5, Ch. 137, L. 1949; amd. Sec. 92, Ch. 405, L. 1973.

Amendments

The 1973 amendment inserted "state tax appeal" before "board" throughout the

section; deleted "which is within the jurisdiction of the board" from the end of the third sentence; substituted "department of revenue" for "board" in the middle of the fifth sentence and for "board of equalization" in the eighth sentence; deleted "If the claim is found to be correct and is approved by the board and the state board of examiners" from the beginning of the ninth sentence; and substituted "the department" for "said board" near the beginning of the last sentence.

84-4823. Penalty for nonpayment by railroad company. If any such railroad company shall fail to pay such tax within the time specified in this act, a penalty of ten per cent (10%) of the amount of such tax shall be added thereto and charged against such railroad company by the department of revenue.

History: En. Sec. 6, Ch. 137, L. 1949; amd. Sec. 155, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" at the end of the section.

84-4824. Actions to recover delinquent taxes and penalties—additional taxes. If the taxes and penalties provided for in this act to be paid by the railroad company on the property of such freight line company remain unpaid more than ninety (90) days from the due date, the department shall cause an action to be brought to recover the amount of such delinquent taxes and penalties in the district court of any county within the state of Montana in which service can be had on the railroad company which is liable for the payment of such taxes or penalties, or in which the property of such delinquent railroad company can be seized under attachment or garnishment proceedings in the manner prescribed by law. In the event the state tax appeal board under its authority to raise or lower the rate of the taxes which would be payable on the cars of such freight line company if taxed upon an ad valorem basis, shall, after a hearing as herein provided, find taxes due from any such freight line company in excess of the five per cent (5%) of all gross revenue in this state which is required to be paid by the railroad companies, such additional tax as so determined shall be due and payable by the freight line company upon which the assessment is made, and if such tax shall remain unpaid for more than ninety (90) days after notification of such assessment by the state tax appeal board, the board shall cause an action to be brought to recover the amount of such additional tax in the district court of any county within the state of Montana in which service can be had on the freight line company liable for the tax or in which the property of such delinquent freight line company can be seized under attachment or garnishment proceedings in the manner prescribed by law.

History: En. Sec. 7, Ch. 137, L. 1949; amd. Sec. 98, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" before "shall cause an action" in the middle of the first sentence; and inserted "state tax appeal" before "board" in two places in the second sentence.

84-4825. Disposition of moneys—limitation of actions. All taxes collected under the provisions of this act shall be credited by the state treasurer to the state general fund. An action or proceeding in court to determine the correctness of such tax must be instituted within sixty (60) days after the payment of the tax.

History: En. Sec. 9, Ch. 137, L. 1949; amd. Sec. 4, Ch. 126, L. 1963; amd. Sec. 99, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted a second sentence reading: "If any claim for refund be pending before the board, the board shall determine whether a refund should be made."

84-4826. Failure to file report—estoppel to impeach department of revenue's determination. If any railroad company or freight line company affected by this act shall refuse or neglect to make any report required by this act, or shall refuse or neglect to permit an examination of its books, records, accounts and papers upon demand of the department of revenue, or shall refuse or neglect to appear before the department in obedience to its order or subpoena, or shall fail to object to the tax imposed by this act within the time and in the manner prescribed by this act, it shall be estopped to question or impeach the action or determination of the department as to the validity of the tax imposed hereunder.

History: En. Sec. 10, Ch. 137, L. 1949; amd. Sec. 156, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" in three places.

CHAPTER 49—INCOME TAX

Section

84-4901. Income tax—definitions.
84-4902. Rate of income tax.
84-4902.1. Surtax.
84-4903. Tax on nonresident—alternative tax based on gross sales.
84-4903.1. Collection of tax from nonresidents—withholding authorized.
84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state department of revenue—additional reports and information—rules and regulations—order for withholding payments.
84-4903.5. Monthly payment by withholding agent—exception.
84-4903.6. Modification of withholding provisions.
84-4903.7. Failure to withhold or pay—penalties.
84-4903.8. Department may require withholding agent to make return and pay tax at any time.
84-4903.9. Amounts withheld as lien against agent—priority.
84-4903.10. Rights of nonresident.
84-4903.11. Nonresident ad valorem taxpayers—list—duty of state department of revenue or its agent.
84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare.
84-4903.13. Rules and regulations.
84-4905. Adjusted gross income.
84-4907. Nonresident taxpayers.
84-4907.1. Veterans' bonus—exemption from income tax law.
84-4908. Alternative deduction allowed in computing net income.
84-4913. Information agents' duties.
84-4914. Returns and payment of tax—penalty and interest—refunds—credits.
84-4919. Time for filing—affidavit—forms.
84-4920. Revision of return—time for determining tax—examination of records and persons.
84-4920.1. Suspension of running of statute of limitations—grounds.
84-4921. Oaths may be administered by director of revenue and designated employees.
84-4922. Revision—application—hearing—adjustment.
84-4923.1. Review by court.
84-4924. Penalties for violations of act.
84-4928. Levy upon and sale of property for payment of income taxes.
84-4928.1. Jeopardy assessments.
84-4929. Action by attorney general.

84-4930. Department authorized to make rules and regulations.
84-4931. Divulging information unlawful—exceptions—penalty.
84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states.
84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required.
84-4939. Declaration of estimated tax.
84-4940. Installment payments of estimated tax.
84-4942. Definitions.
84-4943. Deduction and withholding of tax from wages—amount.
84-4946. Quarterly payment by employer—exception.
84-4948. Annual withholding statement.
84-4950. Filing of annual statement by employer—duty.
84-4951. Amounts withheld, held in trust for state—warrants to collect.
84-4955. Rules and regulations—remedies for administration, enforcement and collection.
84-4956. Credits and refunds.
84-4958. Release of lien or partial discharge of property.

84-4901. (2295.1) **Income tax—definitions.** For the purpose of this act unless otherwise required by the context:

(1) The word "department" means the state department of revenue.

(2). * * * [Same as parent volume.]

(3) The term "taxable year" means the taxpayer's taxable year for federal income tax purposes.

(4). * * * [Same as parent volume.]

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act. The term "received" for the purpose of computation of taxable income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this act.

(6) and (7). * * * [Same as parent volume.]

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than the one embraced within the United States, its territories and possessions.

(9). * * * [Same as parent volume.]

(10) The term "net income" means the adjusted gross income of a taxpayer less the deductions allowed by this act.

(11) The term "taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947; amd. Sec. 1, Ch. 253, L. 1959; amd. Sec. 1, Ch. 62, L. 1967; amd. Sec. 157, Ch. 516, L. 1973.

Amendments

The 1967 amendment substituted present subsection (3) for "The words 'taxable year' mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words 'fiscal year' mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first"; substituted "taxable income" for "net income" wherever found in subsection (5); substituted "its territories and possessions" for "The words 'United States' include the states, the territory of Hawaii, and the District of Columbia" at the end of subsection (8);

made minor style changes in subsection (8); and inserted "adjusted" before "gross" in subsections (10) and (11).

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

Effective Date

Section 2 of Ch. 62, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

Cross-References

Corporation income tax, 84-6901 et seq.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year, commencing on or after December 31, 1968 upon the taxable income of every taxpayer subject to this tax, after making allowance for exemptions and deductions, as hereinafter provided, a tax at the following rates, to wit:

(a) On the first one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of two per centum (2%);

(b) On the next one thousand dollars ($1,000) of taxable income, or any part thereof, at the rate of three per centum (3%);

(c) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of four per centum (4%);

(d) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of five per centum (5%);

(e) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of six per centum (6%);

(f) On the next two thousand dollars ($2,000) of taxable income, or any part thereof, at the rate of seven per centum (7%);

(g) On the next four thousand dollars ($4,000) of taxable income, or any part thereof, at the rate of eight per centum (8%);

(h) On the next six thousand dollars ($6,000) of taxable income, or any part thereof, at the rate of nine per cent (9%);

(i) On the next fifteen thousand dollars ($15,000) of taxable income, or any part thereof, at the rate of ten per cent (10%);

(j) On any taxable income in excess of thirty-five thousand dollars ($35,000) of taxable income, or any part thereof, at the rate of eleven per cent (11%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933; amd. Sec. 1, Ch. 228, L. 1957; amd. Sec. 1, Ch. 265, L. 1959; amd. Sec. 1, Ch. 281, L. 1965; amd. Sec. 1, Ch. 5, Ex. L. 1967; amd. Sec. 1, Ch. 10, Ex. L. 1969.

Amendments

The 1967 amendment substantially rewrote this section, increasing the tax. For previous text, see parent volume.

The 1969 amendment, in the introductory paragraph, substituted "1968" for "1966"; inserted subdivisions (g) and (h); redesignated former subdivision (g) as subdivision (i) and raised the rate from "eight per centum (8%)" to "ten per cent (10%)"; redesignated former subdivision (h) as subdivision (j), substituted "thirty-five thousand dollars" for "twenty-five thousand dollars" after "in excess of" and raised the rate from "ten per centum (10%)" to "eleven per cent (11%)."

Tax Credit

Section 2 of Ch. 5, Ex. Laws 1967 read "After the amount of tax liability has been computed for the current taxable year, each person filing a Montana individual income tax return may subtract five per cent (5%) of the tax liability, and the amount remaining is the amount due the state of Montana." Section 2 was repealed by Section 7, Ch. 10, Ex. Laws 1969.

Effective Dates

Section 3 of Ch. 5, Ex. Laws 1967 read

"This act shall be effective as to all taxable years commencing on or after December 31, 1966, whether on a calendar or fiscal year basis."

Section 4 of Ch. 5, Ex. Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 20, 1967.

Repealing Clause

Section 5 of Ch. 5, Ex. Laws 1967 repealed all acts and parts of acts in conflict therewith.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4902.1. Surtax. After the amount of tax liability has been computed for all taxable years commencing on or after December 31, 1970 but before December 31, 1972, each person filing a Montana individual income tax return shall add, as a surtax, forty per cent (40%) of the tax liability, and the amount so arrived at is the amount due the state of Montana. Thereafter the surtax shall be ten per cent (10%) of the tax liability.

History: En. Sec. 2, Ch. 10, Ex. L. 1969; amd. Sec. 40, Ch. 9, 2nd Ex. L. 1971.

Compiler's Notes

Chapter 9, 2nd Ex. L. 1971 provided for a sales tax and use tax in lieu of a portion of the surtax on the income tax, subject to referendum at a special general election held on November 2, 1971. The measure failed by a vote of 154,680 against and 66,967 for.

Title of Act

An act to amend section 84-4902, R. C. M. 1947, relating to the rate of income tax; and providing for a surcharge; and changing and adding income tax brackets and rates of income tax for all taxable years commencing on or after December 31, 1968; and further amending section 84-4903.5, R. C. M. 1947, to provide for monthly payments to the state board of equalization of amounts withheld from payments to nonresidents under section 84-4903.2, R. C. M. 1947, if the amount withheld is $50 or more in each quarterly period of any year, applying changes when payments are due to payment periods beginning after June 30, 1969; and providing an effective date.

Amendments

The 1971 amendment substituted "all taxable years commencing on or after December 31, 1970 but before December 31, 1972" in the first sentence for "the current taxable year"; increased the rate specified in the first sentence from 10% to 40%; and added the second sentence.

84-4903. (2295.3) **Tax on nonresident—alternative tax based on gross sales.** (a) * * * [Same as parent volume.]

(b) Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R. C. M. 1947), every nonresident taxpayer required to file a return, and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana, and whose annual gross volume of sales made in Montana during the taxable year do not exceed one hundred thousand dollars ($100,000), may elect to pay an income tax of one-half (½) of one per cent (1%) of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the taxes imposed under sections 84-4902 and 84-4902.1. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17 of the Multistate Tax Compact.

History: En. Sec. 3, Ch. 181, L. 1933; amd. Sec. 2, Ch. 253, L. 1959; amd. Sec. 1, Ch. 199, L. 1963; amd. Sec. 1, Ch. 15, L. 1971.

Amendments

The 1971 amendment added subsection (b) providing for an alternative tax for nonresident taxpayers.

Effective Dates

Section 2 of Ch. 15, Laws 1971 read "This act is effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 15, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 2, 1971.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4903.1. Collection of tax from nonresidents—withholding authorized. In order to ensure collection, in the manner and to the extent provided by section 84-4907, of the income tax imposed upon the income of nonresidents by section 84-4903, withholding of portions of certain payments to nonresidents and payment of the amounts so withheld to the state department of revenue as partial payment of such nonresidents' income tax in the manner set forth in the following sections shall be, and hereby is, required.

History: En. Sec. 1, Ch. 208, L. 1959; amd. Sec. 158, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-4903.2. Deducting and withholding from payments to nonresidents—transmittal to state department of revenue—additional reports and information—rules and regulations—order for withholding payments. Every person, firm, corporation, association, partnership, or fiduciary doing business in or having income in the state of Montana, including the state of Montana, its agencies, and instrumentalities, counties, cities, towns, school districts, and municipal corporations of every kind, which knowingly makes payments of any kind to any nonresident of the state of Montana for services performed within the state of Montana other than those described in sections 84-4942 and 84-4943, or for casual sales of property, either real or personal, located within the state of Montana, or any prizes or winnings payable from or within the state of Montana, or hiring or having a contract with any nonresident of a temporary nature to be carried out within the state of Montana, shall deduct from such payment or payments an amount to be set by the state department of revenue, not to exceed three per cent (3%) of such payment, which shall be transmitted by him to the state department of revenue as partial payment of such nonresident's income tax.

Upon finding that reports and information, in addition to that now required by law or regulation, should be filed in order to ensure the collection of Montana state income tax on payment to nonresidents for leases, rentals or royalties derived from property located within the state of Montana, the department of revenue may adopt rules and regulations requiring the filing of such reports and information.

If upon notice to a nonresident taxpayer and hearing the department finds that withholding should be made on payments to the taxpayer for leases, rentals or royalties derived from property located within the state of Montana in order to ensure the collection of Montana state income tax, it may order withholding on such payments in an amount equal to the tax liability of the nonresident taxpayer. Such order shall be binding upon all withholding agents as hereinafter described who shall receive a copy thereof, by mail or otherwise, until such agent shall receive a

copy of an order of the department terminating such withholdings as to the nonresident taxpayer.

History: En. Sec. 2, Ch. 208, L. 1959; amd. Sec. 1, Ch. 154, L. 1961; amd. Sec. 159, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

84-4903.5. Monthly payment by withholding agent—exception. Withholding agents required to deduct and withhold tax payments under the provisions of section 84-4903.2 shall remit such payments monthly to the state department of revenue for each monthly period on or before the fifteenth day of the month following the close of such monthly period, except that payments for the month of December shall be made on or before the following January 31, payments for the month of March shall be made on or before the following April 30, payments for the month of June shall be made on or before the following July 31, and payments for the month of September shall be made on or before the following October 31.

Provided, however, that when the aggregate total amount of the tax withheld under the provisions of section 84-4903.2 shall amount to less than fifty dollars ($50) in each quarterly period of any year, such withholding agent shall not be required to file the monthly returns or to make the monthly payments last hereinabove provided for, but in lieu thereof such withholding agent shall, on or before February fifteenth of the year next succeeding that in which such payments were withheld, file an annual return in such form as shall be determined by the department, and shall pay therewith the amount required by this act to be deducted and withheld by such withholding agent from all payments paid during the preceding calendar year.

History: En. Sec. 5, Ch. 208, L. 1959; amd. Sec. 2, Ch. 154, L. 1961; amd. Sec. 3, Ch. 10, Ex. L. 1969; amd. Sec. 160, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "monthly" for "quarterly" wherever appearing in the section; in the first paragraph, substituted "fifteenth day of the month" for "last day of the month," and added the exception; and, in the second paragraph, substituted "fifty dollars ($50)" for "ten dollars ($10)."

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first paragraph and near the end of the second paragraph.

Effective Dates

Section 4 of Ch. 10, Ex. Laws 1969 read "Section 1 [84-4902] and section 2 [84-4902.1] of this act shall be effective as to all taxable years commencing on or after December 31, 1968, whether on a calendar or fiscal year basis."

Section 5 of Ch. 10, Ex. Laws 1969 read "Section 3 [84-4903.5] of this act shall be effective as to all payment periods beginning after June 30, 1969."

Section 6 of Ch. 10, Ex. Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 19, 1969.

Repealing Clauses

Section 7 of Ch. 10, Ex. Laws 1969 read "Section 2 of chapter five, extraordinary session laws of Montana, 1967 is repealed."

Section 8 of Ch. 10, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

84-4903.6. Modification of withholding provisions. The conditions set forth in section 84-4903.2 may be modified by the state department of revenue provided:

(a) The withholding agent shall ensure the department by bond or deposit of securities subject to approval by the state treasurer, or cash which shall not bear interest, that he will comply with the withholding requirements in so far as his obligation as a withholding agent is concerned, or

(b) The nonresident taxpayer shall furnish to the state department of revenue under such rules and regulations as it may prescribe an affidavit as to the correct amount of taxable income subject to the provisions of this act, in which case the state department of revenue shall determine the amount to be withheld.

History: En. Sec. 6, Ch. 208, L. 1959; amd. Sec. 161, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-4903.7. Failure to withhold or pay—penalties. If any withholding agent knowingly fails to withhold or pay to the state department of revenue any sums required by this act, or any order made pursuant to this act, to be withheld and paid, the same additions to the amount of such tax shall be imposed and added as those specified in section 84-4924 with respect to failure to make a return of income or to pay any income tax; and any individual, corporation or partnership, or any officer or employee thereof, who, with intent to evade any tax or any requirement of this act, or who, with like intent, files or supplies any false or fraudulent statement or information, shall be liable to the same penalties as those imposed by section 84-4924 with respect to filing or supplying any false or fraudulent statement or information with respect to income taxes.

History: En. Sec. 7, Ch. 208, L. 1959; amd. Sec. 3, Ch. 154, L. 1961; amd. Sec. 162, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-4903.8. Department may require withholding agent to make return and pay tax at any time. If the state department of revenue in any case has reason to believe that the collection of the tax provided for in this section is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time.

History: En. Sec. 8, Ch. 208, L. 1959; amd. Sec. 163, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

84-4903.9. Amounts withheld as lien against agent—priority. In addition to the penalties above-provided if any withholding agent shall withhold any sums required to be withheld and paid over to the state department of revenue under this act, the amount of the sums so withheld shall constitute a first lien against all property, real and personal, tangible and intangible, of the withholding agent, which lien shall take precedence over all others, it being the intention of this act that the funds withheld by the withholding agent shall be considered funds held in trust by the withholding agent.

History: En. Sec. 9, Ch. 208, L. 1959; amd. Sec. 164, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

84-4903.10. Rights of nonresident. No nonresident taxpayer shall have any right of action against a withholding agent on account of any moneys withheld and paid over to the state department of revenue under this act, but nothing in this section shall be construed as removing any legal rights or remedies of such nonresident taxpayer for return of any tax erroneously or illegally collected or for any refund that may be due him.

For the purposes of any contract, leases or other obligations, any sum withheld pursuant to this act shall be deemed to have been paid to the nonresident at the time of such withholding.

History: En. Sec. 10, Ch. 208, L. 1959; amd. Sec. 165, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first paragraph.

84-4903.11. Nonresident ad valorem taxpayers—list—duty of state department of revenue or its agent. It shall be the duty of the department of revenue or its agent in every county in this state to prepare annually a list showing the names and addresses of all nonresident ad valorem taxpayers in his county, as shown on the current assessment roll, and forward such list to the state department of revenue after the completion of the roll on the second Monday in July but not later than September 30 of each year.

History: En. Sec. 11, Ch. 208, L. 1959; amd. Sec. 100, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent in" for "county assessor of"; and substituted "department of revenue" for "board of equalization" near the end of the section.

84-4903.12. List of loans made to nonresidents upon grain for which chattel mortgage filed—duty of clerk to prepare. It shall be the duty of the county clerk and recorder of every county in this state to prepare monthly a list showing such information as may be prescribed by the state department of revenue with respect to each loan made to a nonresident upon grain for which a chattel mortgage has been filed in his office and such list shall be mailed to the state department of revenue not later than the tenth day of the month following.

History: En. Sec. 12, Ch. 208, L. 1959; amd. Sec. 166, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-4903.13. Rules and regulations. The state department of revenue is hereby empowered to make all necessary rules and regulations for carrying out and enforcing this act.

History: En. Sec. 13, Ch. 208, L. 1959; amd. Sec. 167, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-4905. (2295.5) **Adjusted gross income.** (1) Adjusted gross income shall be the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, and in addition shall include the following:

(a) Interest received on obligations of another state or territory, or county, municipality, district, or other political subdivision thereof:

(b) Refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) Adjusted gross income does not include the following which are exempt from taxation under this act:

(a) Interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof:

(b) All benefits received under the Federal Employees Retirement Act not in excess of three thousand six hundred dollars ($3,600).

(c) All benefits paid under the Montana Teachers Retirement Act which are specified as exempt from taxation by section 75-2713.

(d) All benefits paid under the Montana Public Employees Act which are specified as exempt from taxation by section 68-1303.

(e) All benefits paid under the Montana Highway Patrol Retirement Act which are specified as exempt from taxation by section 31-221.

(f) Montana income tax refunds or credits thereof.

(3) * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947; amd. Sec. 1, Ch. 260, L. 1955; amd. Sec. 1, Ch. 58, L. 1963; amd. Sec. 1, Ch. 129, L. 1965; amd. Sec. 1, Ch. 236, L. 1971; amd. Sec. 1, Ch. 345, L. 1971.

Compiler's Notes

This section was amended twice in 1971, once by Ch. 236 and once by Ch. 345. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Section 75-2713, referred to at the end of subdivision (2) (c), was repealed by Sec. 496, Ch. 5, Laws of 1971. Similar provisions are now contained in sec. 75-6215.

Section 68-1303, referred to at the end of subdivision (2)(d), was repealed by Sec. 63, Ch. 323, Laws of 1973. For similar provision in present law, see sec. 68-2502.

Amendments

Chapter 236, Laws of 1971, added "district, or other political subdivision thereof" to the end of subdivision (1) (a); added "the state of Montana, county, municipality, district, or other political subdivision thereof" to the end of subdivision (2) (a); and made minor changes in phraseology.

Chapter 345, Laws of 1971, deleted former subdivision (2) (b); and redesignated former subdivisions (c), (d), (e), (f), and (g) of subsection (2) as subdivisions (b), (c), (d), (e), and (f), respectively.

Effective Dates

Section 2 of Ch. 236, Laws 1971 read "The provisions of this act shall apply to all taxable years commencing on or after December 31, 1970, whether on a calendar or fiscal year basis."

Section 3 of Ch. 236, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

Section 2 of Ch. 345, Laws 1971 read "For the taxable year beginning on and after January 1, 1971, the amendment to Section 1 of the act is effective in accordance with Public Law 91-156, Section 1 (12 U. S. C. 548 (5)).

"For taxable years beginning on and after January 1, 1972, the amendment to Section 1 of this act is effective in accordance with Public Law 91-156, Section 2 (12 U. S. C. 548)."

Section 3 of Ch. 345, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4907. (2295.7) **Nonresident taxpayers.** In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income from sources within this state, but shall not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent to which the same shall be a part of income from any business, trade, profession or occupation carried on in this state. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules and regulations prescribed by the state department of revenue.

In the case of a taxpayer other than a resident of this state, the deductions allowed in computing net income shall be restricted to those directly connected with the production of Montana income. A temporary resident shall be allowed those deductions allowed a resident to the extent that such deductions were actually incurred or expended in the state of Montana during the course of his residency.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939; amd. Sec. 1, Ch. 63, L. 1949; amd. Sec. 1, Ch. 17, L. 1951; amd. Sec. 1, Ch. 111, L. 1953; amd. Sec. 3, Ch. 260, L. 1955; amd. Sec. 1, Ch. 237, L. 1963; amd. Sec. 1, Ch. 270, L. 1965; amd. Sec. 168, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the first paragraph.

Cross-References

Multistate tax compact, sec. 84-6701.

84-4907.1. Veterans' bonus—exemption from income tax law. All payments made under the World War I Bonus Law, Korean Bonus Law and the Veterans' Bonus Law, are hereby exempt from taxation under the income tax laws of the state of Montana, and any income tax which has been or may hereafter be paid on income received from this source shall be considered an overpayment and shall be refunded upon the filing of an amended return and a verified claim for refund on forms prescribed by the department, in the same manner as other income tax refund claims are paid.

History: En. Sec. 1, Ch. 43, L. 1953; amd. Sec. 1, Ch. 227, L. 1957; amd. Sec. 1, Ch. 4, L. 1965; amd. Sec. 169, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4908. (2295.8) **Alternative deduction allowed in computing net income.** In the case of a resident individual, a standard deduction equal to ten per cent (10%) of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under section 84-4906, R. C. M. 1947. The maximum standard deduction shall be five hundred dollars ($500) except in the case of a single joint return of husband and wife the maximum standard deduction shall be one thousand dollars ($1,000). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of

the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

History: En. Sec. 8, Ch. 181, L. 1933; amd. Sec. 1, Ch. 207, L. 1949; amd. Sec. 1, Ch. 187, L. 1953; amd. Sec. 4, Ch. 260, L. 1955; amd. Sec. 1, Ch. 202, L. 1969; amd. Sec. 1, Ch. 357, L. 1971.

Amendments

The 1969 amendment, in the first sentence, deleted "prior to the allowance of any deductions provided for in section 84-4906" after "adjusted gross income"; substituted the present second sentence for former provision which was similar to the second sentence save for the exception; substituted, in the fourth sentence, "either the husband or the wife" for "a husband or wife" and "one of the spouses" for "the other spouse" and deleted "on the basis of net income computed" after "determined"; and added the last sentence.

The 1971 amendment deleted "except the deduction allowed for federal income taxes under paragraph (b) of that section" from the end of the second sentence.

Effective Dates

Section 2 of Ch. 202, Laws 1969 read "This act is effective as to taxable years ending on and after December 31, 1968."

Section 2 of Ch. 357, Laws 1971 read "The provisions of this act shall be effective for taxable years beginning on and after January 1, 1971."

Section 3 of Ch. 357, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

84-4913. (2295.13) **Information agents' duties.** Every information agent shall make return to the department of complete information concerning the following distributions made for any individual during the taxable year, upon which no withholding tax has been deducted:

(1) Sums in excess of ten dollars ($10) distributed as dividends, interest as defined in section 6049 of the Internal Revenue Code of 1965 or as that section may be amended, and payments made under a retirement plan covering an owner-employee as defined in section 401 (c) (3) of the Internal Revenue Code of 1965 or as that section may be amended;

(2) Interest, other than that specified in subsection (1) of this section, rents, royalties, salaries, wages, prizes, awards, annuities, pensions and other fixed or determinable gains, profits and income in excess of six hundred dollars ($600), except interest coupons payable to the bearer.

The return should be made under the regulations and in the form and manner prescribed by the department, provided, however, that for ease of reporting, the form shall be as nearly identical to the comparable federal form as possible.

History: En. Sec. 13, Ch. 181, L. 1933; amd. Sec. 7, Ch. 260, L. 1955; amd. Sec. 1, Ch. 205, L. 1967; amd. Sec. 170, Ch. 516, L. 1973.

Compiler's Notes

The Internal Revenue Code, referred to in subsection (1), is codified as Tit. 26 of the United States Code.

Amendments

The 1967 amendment completely rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted "department" for "board" in the preliminary clause and in the final paragraph.

84-4914. (2295.14) **Returns and payment of tax—penalty and interest—refunds—credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than six hundred sixty-five dollars

($665), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than one thousand three hundred thirty dollars ($1,330), shall be liable for a return to be filed on such forms and according to such rules and regulations as the department of revenue may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by six hundred dollars ($600) for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under section 84-4910(c) and (d). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of section 84-4910(b), (c) and (d), as prorated according to paragraph (i) of said section.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the department so consents.

(3). * * * [Same as parent volume.]

(4) All taxpayers, including, but not limited to those subject to the provisions of sections 84-4939 and 84-4943, shall compute the amount of income tax payable and shall at the time of filing the return required by this act, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by section 84-4943, and/or any payment made by reason of an estimated tax return provided for in section 84-4939; provided however, the tax so computed is greater by one dollar ($1) than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than one dollar ($1) the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within thirty (30) days after notice of the amount of the tax as computed with interest added at the rate of nine per centum (9%) per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within thirty (30) days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within thirty (30) days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency five per centum (5%)

thereof, provided, however, that no deficiency penalty shall be less than two dollars ($2). Interest will be computed at the rate of nine per centum (9%) per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due (as distinguished from the due date as it may have been extended) to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of nine per centum (9%) per annum from the time when the return was originally required to be filed to the time of payment.

History: En. Sec. 14, Ch. 181, L. 1933; amd. Sec. 1, Ch. 34, L. 1949; amd. Sec. 8, Ch. 260, L. 1955; amd. Sec. 2, Ch. 227, L. 1957; amd. Sec. 5, Ch. 253, L. 1959; amd. Sec. 1, Ch. 201, L. 1963; amd. Sec. 1, Ch. 347, L. 1969; amd. Sec. 1, Ch. 450, L. 1973; amd. Sec. 171, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 450 and once by Ch. 516. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict, the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1969 amendment, in subsection (1), substituted "not filing a joint return with his or her spouse and" for "filing a separate returns" and "not filing separate returns" for "filing a joint return"; in subsection (2), added the last sentence; in subsection (4), made minor changes in punctuation; and in subsection (6), raised the interest rate on delinquent income taxes from "six per centum (6%)" per annum to "nine per centum (9%)."

Chapter 450, Laws of 1973, increased the amounts of income specified in the first sentence from $600 and $1,200 to $665 and $1,330; added the second and third sentences to subsection (1); and made minor changes in phraseology and punctuation.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization throughout the section.

Effective Dates

Section 2 of Ch. 450, Laws 1973 read "This act shall be effective for all taxable years ending on and after December 31, 1972."

Section 3 of Ch. 450, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 23, 1973.

84-4915. (2295.15) **Exemption allowed nonresident, etc.**

Cross-References

Multistate tax compact, sec. 84-6701.

84-4919. (2295.19) **Time for filing—affidavit—forms.** Returns shall be made to the department on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The department may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the department may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the department upon application, but failure to secure the

form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar ($1.00).

History: En. Sec. 19, Ch. 181, L. 1933; amd. Sec. 1, Ch. 105, L. 1935; amd. Sec. 172, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-4920. (2295.20) **Revision of return—time for determining tax—examination of records and persons.** If, in the opinion of the department of revenue, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the department is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of willfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the department within five (5) years after the return was made, and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period notwithstanding the provisions of section 84-4929. In the case of a willfully false or fraudulent return, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined, by any agent or representative designated, by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933; amd. Sec. 1, Ch. 103, L. 1955; amd. Sec. 173, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4920.1. Suspension of running of statute of limitations—grounds. The running of the statute of limitations provided for under section 84-4920 shall be suspended during any period that the federal statute of limitations for collection of federal income tax has been suspended by (1) written agreement signed by the taxpayer or, (2) when the taxpayer has instituted an action which has the effect of suspending the running of the federal statute of limitations, and for one (1) additional year. If the taxpayer fails to file a record of changes in federal taxable income or an amended return as required by section 84-4938, the said statute of limitations

shall not apply until five years from the date the federal changes become final or the amended federal return was filed. If the taxpayer omits from gross income an amount properly includable therein which is in excess of twenty-five per cent (25%) of the amount of adjusted gross income stated in the return the said statute of limitations shall not apply for two additional years from the time specified in section 84-4920.

History: En. Sec. 2, Ch. 103, L. 1955; amd. Sec. 1, Ch. 61, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-4921. (2295.21) **Oaths may be administered by director of revenue and designated employees.** The director and each employee designated by him may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the department.

History: En. Sec. 21, Ch. 181, L. 1933; amd. Sec. 101(a), Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "director and each employee designated by him" for "board and each assistant, or deputy"; and substituted "department" for "board" at the end of the section.

84-4922. (2295.22) **Revision — application — hearing — adjustment.** An application for revision may be filed with the department of revenue by a taxpayer within five (5) years from the original due date of the return. If the taxpayer is not satisfied with the action taken by the department, he may appeal to the state tax appeal board as provided therein, which shall have authority to grant the claim or any part thereof.

History: En. Sec. 22, Ch. 181, L. 1933; amd. Sec. 1, Ch. 58, L. 1955; amd. Sec. 2, Ch. 201, L. 1963; amd. Sec. 102, Ch. 405, L. 1973; amd. Sec. 174, Ch. 516, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 405 and once by Ch. 516. Because of the comprehensive nature of the amendment by Ch. 405, the earlier enactment, the changes made by Ch. 516 were no longer applicable. The compiler has therefore used the language of Ch. 415 above.

Amendments

Chapter 405, Laws of 1973 completely rewrote this section. For prior law, see parent volume.

Chapter 516, Laws of 1973, substituted references to the department of revenue for references to the state board of equalization.

84-4923.1. Review by court. The determination of the state department of revenue may be reviewed in the district court for Lewis and Clark county or the county in which the taxpayer resides or has his principal office or place of business, by a complaint filed by the taxpayer against the state department of revenue within six (6) months after the receipt of notice of the decision of the state department of revenue. Upon the serving of summons upon the state department of revenue as in civil action, the cause shall proceed as other civil cases. Service upon the state department of revenue may be made by serving one copy upon the director of the department of revenue. The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint or proceedings in court for collection of the taxes shall be made, begun or prosecuted until ninety (90) days after such court action is finally determined. From

any determination of such court, an appeal to the supreme court may be taken by either party.

History: En. Sec. 1, Ch. 212, L. 1957; amd. Sec. 103, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization; substituted "director of the department of revenue" for "secretary of the state board of equalization" at the end of the third sentence; and deleted "or one copy upon the chairman of the state board of equalization" at the end of the third sentence.

84-4924. (2295.24) **Penalties for violations of act.** (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income at the time required by or under the provisions of this act, there shall be imposed a minimum penalty of ten dollars ($10) for such failure, or, if a tax in excess of two hundred dollars ($200) is due, a penalty in an amount equal to five (5) per centum thereof, unless it is shown that the failure was due to reasonable cause and not due to neglect. If any person, without intent to evade any tax imposed by this act, fails to pay any tax if one is due at the time required by or under the provisions of this act, there shall be added to the tax an additional amount equal to ten (10) per centum thereof, but not less than ten dollars ($10), unless it is shown that the failure was due to reasonable cause and not due to neglect. Interest at the rate of nine per centum (9%) per annum shall be added to the tax for the entire period it remains unpaid.

(2) If any person fails with intent to evade any tax imposed by this act, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this act there shall be added to the tax an additional amount equal to twenty-five per centum (25%) thereof, but such additional amount shall in no case be less than twenty-five dollars ($25), and interest at one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(3) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the department thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars ($1,000.00), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars ($1,000.00) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

(4). * * * [Same as parent volume.]

History: En. Sec. 24, Ch. 181, L. 1933; amd. Sec. 1, Ch. 163, L. 1955; amd. Sec. 3, Ch. 201, L. 1963; amd. Sec. 2, Ch. 347, L. 1969; amd. Sec. 175, Ch. 516, L. 1973.

Amendments

The 1969 amendment, in subsection (1), deleted "or pay any tax if one is due" after "return of income," rewrote the penalty provision in the first sentence which formerly provided for a 5% penalty, but not less than $2; inserted the second sentence; raised the interest rate in the third sentence from 6 to 9% per year; and in

subsection (2), substituted "twenty-five dollars ($25)" for "two dollars ($2.00)" after "shall in no case be less than."

The 1973 amendment substituted "department" for "board" near the beginning of subsection (3).

Effective Date

Section 3 of Ch. 347, Laws 1967 read "This act is effective as to taxable years ending on and after December 31, 1968."

84-4928. (2295.26) **Levy upon and sale of property for payment of income taxes.** If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the department shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

History: En. Sec. 26, Ch. 181, L. 1933; amd. Sec. 1, Ch. 172, L. 1947; amd. Sec. 176, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-4928.1. Jeopardy assessments. If the state department of revenue finds that the assessment or collection of the tax or a deficiency for any taxable year will be jeopardized in whole or in part by delay, it may mail or issue notice of its findings to the taxpayer, together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the state department of revenue may declare the taxable period of the taxpayer immediately terminated and shall mail or issue notice of its

findings to the taxpayer, together with a demand for immediate payment of the tax based on the period declared terminated.

A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once.

History: En. 84-4928.1 by Sec. 2, Ch. 212, L. 1967; amd. Sec. 177, Ch. 516, L. 1973.

Title of Act

An act providing an accelerated tax collection in the event it appears that a delay will jeopardize the collection of tax due the state of Montana; amending section 84-4946, R. C. M. 1947.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the first paragraph.

Effective Date

Section 3 of Ch. 212, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 28, 1967.

84-4929. (2295.27) **Action by attorney general.** Action may be brought at any time by the attorney general of the state at the instance of the department, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 27, Ch. 181, L. 1933; amd. Sec. 178, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4930. (2295.29) **Department authorized to make rules and regulations.** The department is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

History: En. Sec. 29, Ch. 181, L. 1933; amd. Sec. 179, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4931. (2295.30) **Divulging information unlawful — exceptions — penalty.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the department is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items

thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the department orders them to be destroyed.

(2). * * * [Same as parent volume.]

(3) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

(4) Further, notwithstanding any of the provisions of this section, the department shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910 (d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R. C. M. 1947.

History: En. Sec. 30, Ch. 181, L. 1933; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 180, Ch. 516, L. 1973.

Amendments

The 1967 amendment added subsection (4).

The 1973 amendment substituted "department" for "board" in five places.

84-4937. Credit allowed resident taxpayers for income taxes imposed by foreign states. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for income taxes imposed by and paid to another state or country on income taxable under this act.

(1) and (2). * * * [Same as parent volume.]

(3) The allowable credit shall be computed by formula to be prescribed by the department.

History: En. Sec. 2, Ch. 28, L. 1941; amd. Sec. 7, Ch. 253, L. 1959; amd. Sec. 181, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of subsection (3).

Cross-References

Multistate tax compact, sec. 84-6701.

84-4938. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government

showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States Internal Revenue Service or other competent authority, the taxpayer shall report such change or correction to the department within ninety days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the state department of revenue within ninety days thereafter. The department shall supply all necessary forms and shall return all such forms to the taxpayer after they have been examined by the department, upon the request of the taxpayer.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization.

Effective Date

Section 3 of Ch. 61, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 20, 1967.

84-4939. Declaration of estimated tax. (1). * * * [Same as parent volume.]

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) to (c). * * * [Same as parent volume.]

(d) Such other information as may be prescribed in rules and regulations promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

(a) and (b). * * * [Same as parent volume.]

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the department.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the department.

(a) and (b). * * * [Same as parent volume.]

(6) The department shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7). * * * [Same as parent volume.]

History: En. 84-4939 by Sec. 12, Ch. 260, L. 1955; amd. Sec. 183, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in five places.

84-4940. Installment payments of estimated tax. (1) to (4). * * * [Same as parent volume.]

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the department.

(6). * * * [Same as parent volume.]

History: En. 84-4940 by Sec. 13, Ch. 260, L. 1955; amd. Sec. 184, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of subsection (5).

84-4942. Definitions. When used in this act:

(a) The word "department" means the state department of revenue.

(b) to (f). * * *[Same as parent volume.]

History: En. Sec. 1, Ch. 246, L. 1955; amd. Sec. 185, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization.

84-4943. Deduction and withholding of tax from wages—amount. Every employer making payment of wages shall deduct and withhold upon such wages, a tax determined in accordance with the withholding tax tables which shall be prepared and issued by the department. Persons on active service as a member of the armed forces of the United States shall not be subject to the provisions of this section.

History: En. Sec. 2, Ch. 246, L. 1955; amd. Sec. 3, Ch. 227, L. 1957; amd. Sec. 186, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-4946. Quarterly payment by employer—exception. On or before the last day of the months of April, July, October and January of each calendar year, beginning with the month of October, 1955, every employer subject to the provisions of sections 84-4943 and 84-4945 shall file a return in such form and containing such information as may be required by the department, and shall pay therewith the amount required by section 84-4943 to be deducted and withheld by said employer from wages paid during the preceding quarterly period of three (3) months, beginning with wages paid from and after July 1, 1955.

If the total amount of the tax withheld by an employer under the provisions of this act upon the wages of all employees of any employer is less than ten dollars ($10) in each quarterly period of any year, such employer shall not be required to file the quarterly returns or to make the quarterly payments as provided in the preceding paragraph, but in lieu thereof such employer shall, on or before February fifteenth of the year succeeding that in which such wages were paid, file an annual return in such form as may be required by the department, and shall pay therewith the

amount required to be deducted and withheld by the said employer from all wages paid during the preceding calendar year.

Provided, however, that if the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under section 84-4928.1 with respect to jeopardy assessments of income tax.

History: En. Sec. 5, Ch. 246, L. 1955; amd. Sec. 1, Ch. 212, L. 1967; amd. Sec. 187, Ch. 516, L. 1973.

Amendments

The 1967 amendment, in the first paragraph, substituted "sections 84-4943 and 84-4945" for "this act" after "provisions of"; substituted "as may be required by" for "as shall be determined by" after "such information"; and substituted "section 84-4943" for "this act" after "the amount required by"; and, in the second paragraph, substituted "If the" for "Provided, however, that when the aggregate" before "total amount of the tax"; inserted "by an employer" after "withheld"; substituted "as provided in the preceding paragraph" for "last hereinabove provided for" after "quarterly payments"; deleted "next" before "succeeding"; substituted "as may be required by" for "as shall be determined by" after "in such form"; deleted "by this act" after "the amount required"; added the last paragraph; and made minor changes in phraseology.

The 1973 amendment substituted "department" for "board" in three places.

84-4948. Annual withholding statement. Every employer shall, prior to the fifteenth day of February in each year furnish to each employee a written statement showing the total wages paid by the employer to the employee during the preceding calendar year and showing the amount of the federal income tax deducted and withheld from such wages and the amount of the tax deducted and withheld therefrom under the provisions of this act. Said statement shall contain such additional information and shall be in such form as the department shall prescribe, and a duplicate thereof shall be filed by the employee with his state income tax return.

History: En. Sec. 7, Ch. 246, L. 1955; amd. Sec. 188, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-4950. Filing of annual statement by employer—duty. Every employer shall, on or before the fifteenth day of February in each year file with the department a statement in such form and summarizing such information as the department shall require, including the total wages paid to each employee during the preceding calendar year or any part thereof, and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of this act. Said annual statement filed by an employer shall, with respect to the wage payments reported therein, constitute full compliance with the requirements of section 84-4913, relating to the duties of information agents, and no additional information return shall be required with respect to such wage payments.

History: En. Sec. 9, Ch. 246, L. 1955; amd. Sec. 189, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-4951. Amounts withheld, held in trust for state—warrants to collect. Every employer who deducts and withholds any amounts under the provisions of this act shall hold the same in trust for the state of Montana, and if any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the department shall issue a warrant under its official seal which shall have the same force and effect and shall be enforced and carried into execution in the same manner as that specified in section 84-4928, with respect to warrants relating to unpaid income taxes.

History: En. Sec. 10, Ch. 246, L. 1955; amd. Sec. 190, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

84-4955. Rules and regulations—remedies for administration, enforcement and collection. The department is hereby empowered to adopt rules and regulations for the carrying out of the provisions of this act and the enforcement thereof. All of the remedies available to the state of Montana for the administration, enforcement and collection of income taxes shall be available and shall apply to the tax required to be deducted and withheld under the provisions of this act.

History: En. Sec. 14, Ch. 246, L. 1955; amd. Sec. 191, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-4956. Credits and refunds. If the department of revenue discovers from the examination of a return, or upon claim duly filed by a taxpayer, or upon final judgment of a court, that the amount of income tax is in excess of the amount due, or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment shall be credited against any income tax, penalty or interest, then due from the taxpayer, and the balance of such excess shall be refunded to the taxpayer.

Effective with taxable years ending on or after December 31, 1959, no such credit or refund shall be allowed or made after five (5) years from the date prescribed by statute for filing the return, unless before the expiration of such period a claim therefor is filed by the taxpayer, or the department of revenue has determined the existence of the overpayment and has approved the refund or credit thereof. Within six (6) months after a claim for refund is filed the state department of revenue shall examine said claim and either approve or disapprove it. If said claim is approved, the credit or refund shall be made to the taxpayer within sixty (60) days after the claim is approved; if the claim is disallowed, the state department of revenue shall so notify the said taxpayer and shall grant a hearing thereon upon proper application by the taxpayer. If the department disapproves a claim for refund, review of the determination of the department may be had as otherwise provided in this chapter.

Except as hereinafter provided for, effective with taxable years ending on or after December 31, 1962, interest shall be allowed on overpayments

at the rate of six per cent (6%) per annum from the due date of the return or from the date of the overpayment (whichever date is later) to the date the department of revenue approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment shall be deemed to be the date on which the return for the taxable year was due. No interest shall accrue on an overpayment if the taxpayer elects to have it applied to his estimated tax for the succeeding taxable year; nor shall interest accrue during any period the processing of a claim for refund is delayed more than thirty (30) days by reason of failure of the taxpayer to furnish information requested by the state department of revenue for the purpose of verifying the amount of the overpayment. No interest shall be allowed (a) if the overpayment is refunded within six (6) months from the date the return is due or the date the return is filed, whichever date is later; or (b) if the overpayment results from the carryback of a net operating loss; or (c) if the amount of interest is less than one dollar ($1.00). An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability, or one reasonably assumed to be imposed by this law, shall not be considered an overpayment with respect to which interest is allowable.

History: En. Sec. 1, Ch. 138, L. 1957; amd. Sec. 3, Ch. 199, L. 1963; amd. Sec. 192, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization throughout the section.

84-4958. Release of lien or partial discharge of property. (1) The department of revenue shall issue a certificate of release of any lien imposed with respect to any tax due under this chapter, when it finds that the liability for the amount of tax assessed, together with all penalties and interest in respect thereof, has been fully satisfied. The department of revenue may issue a certificate of release if it determines that the lien is unenforceable.

(2) The department of revenue may issue a certificate of discharge of any part of the property subject to any lien imposed with respect to any tax due under this chapter, if:

(a). * * * [Same as parent volume.]

(b) There is paid to the state treasurer in part satisfaction of the liability secured by the lien, an amount which shall not be less than the value, as determined by the department of revenue, of the interest of the state of Montana in the part to be discharged; or

(c) The department of revenue determines at any time that the interest of the state of Montana in the part to be so discharged has no value.

History: En. Sec. 1, Ch. 130, L. 1965; amd. Sec. 193, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in five places.

CHAPTER 51—INSURANCE COMPANIES GENERAL PROPERTY TAX

84-5101. (2111) **Assessment and taxation of insurance companies.**

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 52—LIVESTOCK TAXATION

Section
84-5202. Assessment of migratory livestock.
84-5203. Duty of owner when livestock is removed from home county to another county.
84-5205. Collection and disposition of proceeds of taxes.
84-5206. Distribution of migratory stock fund.
84-5210. State department of revenue to prescribe levy.
84-5214. Levy for bounty moneys—use of proceeds.

84-5202. (2069) **Assessment of migratory livestock.** All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of the assessment of such livestock, to make and deliver to the state department of revenue or its agent in the county where such livestock is found, and to the department of revenue or its agent in the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other inclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock.

History: En. Sec. 1, Ch. 125, L. 1909; amd. Sec. 1, Ch. 177, L. 1921; re-en. Sec. 2069, R. C. M. 1921; amd. Sec. 104, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue or its agent for references to the county assessor in two places.

84-5203. (2070) **Duty of owner when livestock is removed from home county to another county.** Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the department of revenue

or its agent in such county, and to the department or its agent in the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment.

History: En. Sec. 2, Ch. 125, L. 1909; re-en. Sec. 2070, R. C. M. 1921; amd. Sec. 105, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

84-5205. (2072) **Collection and disposition of proceeds of taxes.** The department or its agent shall indicate on the assessment roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and [the department or its agent shall place] the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

History: En. Sec. 4, Ch. 125, L. 1909; re-en. Sec. 2072, R. C. M. 1921; amd. Sec. 106, Ch. 405, L. 1973.

Compiler's Notes

The language in the bracketed portion of the 1973 amendatory act read "shall place the department or its agent." The compiler has reworded the phrase to correct the apparent error.

Amendments

The 1973 amendment substituted references to the department or its agent for references to the county assessor in two places.

84-5206. (2073) **Distribution of migratory stock fund.** At the regular meeting in July of the board of county commissioners, the department of revenue or its agent shall transmit to the board all information filed with the department or in its possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act.

History: En. Sec. 5, Ch. 125, L. 1909; re-en. Sec. 2073, R. C. M. 1921; amd. Sec. 1, Ch. 52, L. 1945; amd. Sec. 107, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

84-5210. (2077) **State department of revenue to prescribe levy.** The state department of revenue is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state department of revenue the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; re-en. Sec. 2077, R. C. M. 1921; amd. Sec. 194, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-5211. (2078) **Limitation of levies—livestock moneys.**

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

84-5212. (2079) **Use of moneys arising from taxes prescribed, etc.**

Cross-References

Livestock commission renamed and continued in department of livestock, sec. 82A-1303.

84-5214. (2081) **Levy for bounty moneys—use of proceeds.** The department of revenue shall, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half (1½) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The moneys received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the earmarked revenue fund (with other moneys in that fund under the provisions of section 46-1901) and such moneys shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter approved by said commission, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All such moneys shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in co-operation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims shall be approved in excess of moneys available for such purposes, and no warrants shall be registered against such moneys.

History: En. Sec. 6, Ch. 127, L. 1915; re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. 1929; amd. Sec. 1, Ch. 111, L. 1947; amd. Sec. 103, Ch. 147, L. 1963; amd. Sec. 54, Ch. 100, L. 1973; amd. Sec. 108, Ch. 405, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 100 and once by Ch. 405. Neither act mentioned the other. In so far as they conflict, the compiler has used the language of Ch. 405, the later in date of approval.

Amendments

Chapter 100, Laws of 1973 deleted "under the authority of section 9, article XII of the constitution of Montana, and here-

by, annually prescribe" before "make and levy an ad valorem tax" in the first sentence.

Chapter 405, Laws of 1973, substituted "department of revenue" for "state board of equalization" at the beginning of the first sentence; and made the same deletion as did Ch. 100, except that Ch. 405 did not delete "annually prescribe."

CHAPTER 54—MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Section
84-5402. Net proceeds tax—statement of yield, penalty, extension of time.
84-5403. Net proceeds—how computed.
84-5405. Lien of tax and penalty.
84-5406. Assessment of royalties.
84-5407. False or fraudulent reports, procedure in case of.
84-5408. Transmission of net proceeds to county assessor.
84-5409. Taxation and payment on royalty interests.
84-5410. Penalty for failure to make statement—estimate of net proceeds.
84-5412. Examination of records by department of revenue.
84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

84-5401. (2088) Taxation of mines.

Cross-References

Multistate tax compact, sec. 84-6701.

84-5402. (2089) **Net proceeds tax—statement of yield, penalty, extension of time.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state department of revenue on or before the thirty-first day of March. Such statement shall show the following:

1 to 12. * * * [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be

collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947; amd. Sec. 1, Ch. 138, L. 1969; amd. Sec. 195, Ch. 516, L. 1973.

Amendments

The 1969 amendment added the last two paragraphs.

The 1973 amendment substituted "department of revenue" for "board of equalization" in the preliminary clause and the final two paragraphs.

84-5403. (2090) **Net proceeds—how computed.** The state department of revenue shall calculate and compute from said returns the gross product yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to wit:

1 to 7. * * * [Same as parent volume.]

In computing the deductions allowable for repairs, improvements and betterments to the mine, the state department of revenue shall compute and allow ten per cent (10%) of such cost each year for a period of ten (10) years.

No moneys invested in mines or improvements shall be allowed as a deduction unless all machinery, equipment and buildings represented by such moneys shall be returned to the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, and except as hereinbefore provided in this section, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935; amd. Sec. 1, Ch. 57, L. 1951; amd. Sec. 1, Ch. 257, L. 1959; amd. Sec. 109, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization at the beginning of the first paragraph and in the paragraph following subdivision 7; and deleted "the county assessor of" before "the county in which such mine is located" in the second paragraph following subdivision 7.

84-5405. (2090.2) **Lien of tax and penalty.** The tax and/or penalty so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery,

buildings, tools and equipment used in operating said mine or mining claim, and the tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 4, Ch. 161, L. 1933; amd. Sec. 2, Ch. 138, L. 1969.

Amendments

The 1969 amendment inserted "and/or penalty" after "The tax" at the beginning of the section; and added "and the tax and/or penalty * * * such tax and/or penalty is collected."

84-5406. (2090.3) **Assessment of royalties.** Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state department of revenue shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301.

History: En. Sec. 3, Ch. 188, L. 1935; amd. Sec. 196, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

84-5407. (2090.4) **False or fraudulent reports, procedure in case of.** If any such report required by this chapter contains any willfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state department of revenue shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as

aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935; amd. Sec. 197, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5408. (2091) **Transmission of net proceeds to county assessor.** On or before the first day of July in each year the state department of revenue shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by the state department of revenue. [The said valuation for the purpose of taxation shall be an amount equal to the average net proceeds from such mine for the five calendar years next preceding, or for as many years next preceding as the mine has produced gross yield, or for as many years next preceding as this act has been in effect, whichever is less. The average net proceeds for valuation shall be computed by dividing the total net proceeds for such period by the number of years for which such net proceeds were taken into account. In determining net proceeds of each individual year for averaging to determine valuation for purposes of taxation, the actual annual net proceeds as defined in section 84-5403, including losses, if any, from such mines and mining claims shall be taken for each year rather than the average valuation for such year. In no event shall there be valuation for the purpose of taxation for a year when there has been no gross yield from such mines and mining claims for the preceding average years and such years shall not be taken into account in computing the net proceeds for any year.] The county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines," alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1 to 5. * * * [Same as parent volume.]

The form of said assessment roll shall be prescribed by the state department of revenue in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945; amd. Sec. 1, Ch. 181, L. 1959; amd. Sec. 198, Ch. 216, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5409. (2091.1) **Taxation and payment on royalty interests.** At the time of transmitting net proceeds assessments the state department of revenue shall also transmit the royalty lists or schedules to the county assessor of each county in which such mines and mining claims are located and thereupon the county assessor shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the fifteenth day of September following, upon which date said taxes shall be due and payable. Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county assessor in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; amd. Sec. 1, Ch. 162, L. 1939; amd. Sec. 2, Ch. 257, L. 1959; amd. Sec. 199, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the first sentence.

84-5410. (2092) **Penalty for failure to make statement—estimate of net proceeds.** If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state department of revenue any statement required by this act, or to comply with any requirements of this act, the state department of revenue must cause such refusal to be noted upon the assessment roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state department of revenue shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or both such fine and imprisonment.

History: En. Sec. 4, Ch. 237, L. 1921; re-en. Sec. 2092, R. C. M. 1921; amd. Sec. 200, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5412. (2094) **Examination of records by department of revenue.** The state department of revenue shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield

of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state department of revenue find any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-5403.

History: En. Sec. 6, Ch. 237, L. 1921; re-en. Sec. 2094, R. C. M. 1921; amd. Sec. 201, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941; amd. Sec. 202, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the final sentence.

CHAPTER 55—LIEU TAXES ON RESETTLEMENT PROJECTS—REQUESTS FOR UNITED STATES PAYMENT OF

Section
84-5501. Definitions.
84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when.

84-5501. Definitions. The following definitions shall be applied to the terms used in this act:

(1). * * * [Same as parent volume.]

(2) "Department" shall mean the state department of revenue of the state of Montana.

(3) to (6). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 58, L. 1939; amd. Sec. 203, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted subdivision (2) for a subdivision defining "board" as the state board of equalization.

84-5502. State department of revenue may make requests for sums in lieu of taxes from United States, when. The department of revenue is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939; amd. Sec. 204, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board" at the beginning of the section.

CHAPTER 56—CIGARETTE TAX—LICENSES—STAMPS

Section
84-5606. The tax.
84-5606.2. Definitions.
84-5606.3. Wholesaler's and retailer's licenses—multiple places of business—application forms.
84-5606.4. Vending machines not places of business per se—reports.
84-5606.5. Wholesaler's and retailer's license fees—renewal—display of license.
84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses.
84-5606.7. Affixing of insignia.
84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture.
84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture.
84-5606.10. Tax imposed by section 84-5606.
84-5606.11. Only licensed wholesalers and retailers to affix insignia.
84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax.
84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report.
84-5606.14. Resale of insignia prohibited—unused meter settings.
84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash.
84-5606.16. Proceedings upon failure or refusal to pay tax—penalty.
84-5606.17. Tax meter users to keep certain records—examination of records.
84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met.
84-5606.19. Place where violations committed deemed a nuisance.
84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report.
84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture.
84-5606.22. Inventory of seized property—application for return of property.
84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed.
84-5606.24. Hearing or rehearing before state tax appeal board.
84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date.
84-5606.26. Department's duties and powers—arrest, entry of complaint and lawful search and seizure authorized.
84-5606.27. Promulgation of rules and regulations.
84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation.
84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages.
84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished.
84-5606.31. Violation of act a misdemeanor unless otherwise provided—penalties.

84-5601 to 84-5605. Repealed.

Repeal

Sections 84-5601 to 84-5605 (Secs. 1 to 5, Ch. 289, L. 1947; Secs. 1, 2, Ch. 18, L. 1957), relating to licensing of cigarette dealers and distributors, were repealed by Sec. 32, Ch. 140, Laws 1969.

84-5606. The tax. (1) All taxes paid pursuant to the provisions of this section shall be conclusively presumed to be direct taxes on the retail

consumer precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of the cigarettes and recovered from the ultimate consumer or user. Any person selling cigarettes at retail shall state or separately display in the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this subdivision shall in no way affect the method of collection of such tax as provided by this section.

(2) From and after the effective date of this amendatory law, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax which shall be paid prior to the time of sale and delivery thereof, to wit: Nine cents (9¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then nine cents (9¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package.

(3) From and after the effective date of this amendatory law there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivision (2) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

Two cents (2¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of all bonds of the state of Montana, and the payment of interest thereon, issued under the authority of said Initiative No. 54 as amended, for the purpose of paying an honorarium to the residents of Montana who were in military service in the military forces of the United States in World War II, the Korean War, or World War I, and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(4) From and after the effective date of this amendatory act of the thirty-eighth legislative assembly of the state of Montana, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following excise tax, in addition to the excise tax on cigarettes, levied, imposed and assessed by subdivisions (2) and (3) of this section 84-5606, an additional tax which shall be paid prior to the time of sale and delivery of such cigarettes, to wit:

One cent (1¢) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then one cent (1¢) on each twenty (20) or fraction of twenty (20) cigarettes contained in such package; which additional tax shall continue in force until the payment and retirement of the additional bonds of the

state of Montana authorized by amendatory acts of the thirty-fifth and thirty-eighth legislative assemblies, and the payment of the interest thereon and until the payment and retirement of all long-range building program bonds issued under the provisions of Title 79, chapter 22, of the Revised Codes of Montana, 1947.

(5) Within seventy-two (72) hours after receipt by the distributor or dealer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required insignia denoting the tax thereon. Said insignia shall be properly canceled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required insignia to affix thereto in such a manner that the insignia will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license stamp or insignia provided for in this law, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) year or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971.

Amendments

The 1967 amendment added "and until the payment * * * Revised Codes of Montana, 1947" at the end of the second paragraph of subdivision (3), and after "interest thereon" in the second paragraph of subdivision (4), substituted the same phrase for "and the payment of the expenses of administration of the amendatory act."

The 1971 amendment increased the tax specified in subsection (2) from five cents to nine cents per package and made minor changes in style.

Referendum Result

Section 1 of Ch. 318, Laws 1967, read: "It is determined that the electors of the state at the general election held in November, 1966, approved the levy and collection of the three-cent (3¢) per package cigarette tax authorized by section 84-5606, subdivisions (3) and (4), R. C. M. 1947, for the purpose of financing the cost of constructing and remodeling state buildings; this referendum measure having been presented at said election in the manner directed by chapter 264 of the Session Laws of the thirty-ninth legislative assembly, and having been approved by a majority of the electors voting on the question; and that it is now necessary to establish the procedure by which said referendum may be made effective."

INITIATIVE MEASURE NO. 54 AMENDMENTS

Section 9 of chapter 270 of the 1963 Session, which amended Initiative Measure No. 54 (Laws 1951, pp. 781 to 790) was amended by section 1 of chapter 112 of the 1967 Session. Section 1 of chapter 112 of the 1967 Session was amended by section 1 of chapter 236 of the 1969 Session; Section 9 of the act now reads:

Chapter 270, Laws 1963; amd. Chapter 112, Laws 1967; amd. Chapter 236, Laws 1969.

Section 9. Claims for benefits under the provisions of subdivision (1) of section 2, and/or under section 3 of said Initiative No. 54, as by this amendatory act amended, may be filed at any time before the expiration of five (5) years and six (6) months from and after the January first next following the date of the passage and approval of this act, provided, however, that said period of five (5) years and six (6) months shall be extended for a period equal to the period, or the aggregate of the periods, of the time during which the administration of this act shall be suspended, by reason of litigation or from any other cause.

[The remainder of Ch. 112, Laws 1967 read as follows:

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect upon its passage and approval." Approved February 21, 1967.]

84-5606.2. Definitions. As used in this act the following definitions shall apply unless the context otherwise requires:

(a) The word "department" shall mean the state department of revenue of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association however formed.

(c) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper, or any other substance or material except tobacco.

(d) The words "insignia" or "indicia" shall mean the impression or mark approved by the state department of revenue, under the provisions of this act.

(e) The words "full face value of insignia" shall mean the total amount of the tax levied under this act.

(f) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in carload lots for distribution to wholesaler and retailers in original cases.

(g) The word "wholesaler" shall mean and include any person resident in this state who brings or causes to be brought into this state unstamped cigarettes purchased directly from the manufacturers thereof and stores, sells, or otherwise disposes of the same after they shall reach this state; and also any person who, within this state, manufactures or produces, directly or indirectly, cigarettes and sells or distributes the same within this state.

(h) The words "licensed wholesaler" shall mean a wholesaler duly licensed under the provisions of this act.

(i) The words "cigarette vendor" shall mean and include any person, company or corporation, doing business in the state, who purchases cigarettes through a wholesaler for ten (10) or more cigarette vending machines, which he operates for a profit in premises or locations other than his own. Such person, company or corporation shall be treated as a wholesaler. Any person, company, corporation or fraternal organization who operates less then ten (10) cigarette vending machines shall be treated as a retailer.

(j) The word "retailer" shall mean any person other than a wholesaler, who is engaged in the business of selling cigarettes at retail.

(k) The words "licensed retailer" shall mean any person other than a wholesaler, who is duly licensed under the provisions of this act.

(l) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, as defined by section 87A-2-106, R. C. M. 1947, or by gift, barter or exchange.

History: En. Sec. 1, Ch. 140, L. 1969; amd. Sec. 205, Ch. 516, L. 1973.

Title of Act

An act repealing sections 84-5601, 84-5602, 84-5603, 84-5604, 84-5605, 84-5607, 84-5608, 84-5609, 84-5610, 84-5611, 84-5612, 84-5613, 84-5614, 84-5615, 84-5616, 84-5617, 84-5618, 84-5619, 84-5620, 84-5621, 84-5622, and 84-5623, R. C. M. 1947, and providing for annual license fees and for annual licensing of wholesalers and retailers of

cigarettes, and for the payment of the costs of enforcement of state cigarette laws; and providing procedures for the collection of the tax imposed by section 84-5606, R. C. M. 1947; and providing for penalties for violations of this act, and providing for the administration of this act; and providing revenue for the general fund of the state of Montana.

Amendments

The 1973 amendment substituted subdivision (a) for a subdivision defining "board" as the state board of equalization; and substituted "department of revenue" for "board of equalization" in subdivision (d).

Cross-References

Multistate tax compact, sec. 84-6701.

84-5606.3. Wholesaler's and retailer's licenses—multiple places of business—application forms. Every wholesaler or retailer shall obtain a license from the department before engaging in the business of wholesaler or retailer. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such wholesaler or retailer within the state of Montana. Application forms shall require the type and general description of applicant organizations, names and home addresses of all known owners, state whether or not principals of such organization have been convicted of a felony and identify each such individual, and such other pertinent information as the board may require in regularly promulgated regulations.

History: En. Sec. 2, Ch. 140, L. 1969; amd. Sec. 206, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the first sentence.

84-5606.4. Vending machines not places of business per se—reports. Cigarette vending machines shall not be considered as places of business per se but a report of each and all machines shall be made on forms prescribed by the department, which shall state the name and address of the cigarette vendor, the assigned location of each machine with best machine identification available, type of business, and such other information as the board may require for proper administration of this act.

History: En. Sec. 3, Ch. 140, L. 1969; amd. Sec. 207, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the middle of the section.

84-5606.5. Wholesaler's and retailer's license fees—renewal—display of license. Each application for a wholesaler's license shall be accompanied by a fee of fifty dollars ($50) effective July 1, 1969. Each application for a retailer's license shall be accompanied by a fee of five dollars ($5) effective July 1, 1969. These licenses shall be renewed annually upon payment of the annual fee in the amount set forth above, and shall be effective for one year, without proration. Each license shall be prominently displayed on the licensed premises, and a separate license shall be displayed at each place of business owned, controlled or operated by such wholesaler or retailer.

History: En. Sec. 4, Ch. 140, L. 1969.

84-5606.6. Disposition of license fees—appropriations—transfer to general fund—justification of expenses. All license fees collected under the

provisions of this act shall be deposited monthly with the state treasurer in the department's cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the department, from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the department shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars ($7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the board a sum deemed justified and reasonable to operate the department's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thousand five hundred dollars ($7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-5606.7. Affixing of insignia. Wholesalers and retailers licensed under this act may buy, sell or have in their possession only cigarettes which have the insignia provided for in this act on each package. The insignia provided for in this act shall be sold to, and affixed by, licensed wholesalers and licensed retailers only.

History: En. Sec. 6, Ch. 140, L. 1969.

84-5606.8. Revocation or suspension of license—hearing and appeal—duration—sale of cigarettes after revocation or suspension a misdemeanor—forfeiture. The department may revoke or suspend the license of any wholesaler or retailer for failure to comply with any provision of this act or of the Unfair Cigarette Sales Act (sections 51-301 through 51-314, R. C. M. 1947), and with any lawful rule or regulation of the department made pursuant to said laws. Any person aggrieved by such revocation or suspension may apply to the department for a hearing which shall be open to the public, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. When a license has been duly suspended, the suspension may be for any period not to exceed one (1) year. Any person who shall sell cigarettes after his license has been revoked or suspended is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 7, Ch. 140, L. 1969; amd. Sec. 209, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-5606.9. Unlawful acts when license not current and valid—sales to licensed wholesalers, subjobbers, retailers and cigarette vendors only—misdemeanor—forfeiture. No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail unless his license is current and valid, under the provisions of this act. No person shall sell, offer to sell or possess with intent to sell, any cigarettes, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, retailer or vendor who is not licensed under this act or who is not licensed by the state in which he sells, offers to sell or intends to sell cigarettes. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 8, Ch. 140, L. 1969; amd. Sec. 1, Ch. 319, L. 1973.

Amendments

The 1973 amendment inserted the second sentence.

Effective Date

Section 2 of Ch. 319, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 15, 1973.

84-5606.10. Tax imposed by section 84-5606. The tax referred to in this act shall mean the tax imposed by section 84-5606, R. C. M. 1947. The full face value of the insignia or tax shall be added to the cost of the cigarettes and recovered from the ultimate consumer or user.

History: En. Sec. 9, Ch. 140, L. 1969.

84-5606.11. Only licensed wholesalers and retailers to affix insignia. Insignia shall be affixed to packages of cigarettes only by licensed wholesalers and licensed retailers.

History: En. Sec. 10, Ch. 140, L. 1969.

84-5606.12. Purchase of insignia at discount to defray costs—defrayment inapplicable to certain portion of tax. Every licensed wholesaler and licensed retailer shall be entitled to purchase said insignia at full face value less eight per cent (8%) of the face value, upon payment therefor, as defrayment of the costs of affixing insignia and precollecting such tax on behalf of the state of Montana. This defrayment is not applicable to that portion of the tax collected for any veterans' honorarium or long-range building program.

History: En. Sec. 11, Ch. 140, L. 1969.

Calculating Wholesale Price

Despite provisions of this section for discount to wholesalers in purchasing tax insignia, the full face value of the insignia is to be used in calculating wholesale cigarette price under section 51-301, so that board of equalization formula reducing wholesale cost by discount became improper with enactment of chapter 140 of 1969 Laws. Montana Assn. of Tobacco & Candy Distributors v. State Board of Equalization, 156 M 108, 476 P 2d 775.

84-5606.13. Use of tax meter machine authorized—insignia to be approved—marking of imported packages of cigarettes required—supervision of machines—charge—report. The department of revenue may authorize any wholesaler or retailer of cigarettes licensed under this act to use a tax meter machine with which to imprint an insignia upon each package of cigarettes imported, sold or delivered in this state. The insignia shall be one approved by the department. Each package of cigarettes imported

into this state, delivered or sold therein shall be marked with the proper insignia of such tax-stamping meter and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any wholesaler or retailer licensed under this act. The department shall supervise and check the operation of such tax meter machines. The operator of such machine before using the same, shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. Prior to setting said meter the county treasurer shall charge said operator the amount of money proper for said setting, less the expense defrayment of eight per cent (8%) provided for in section 11 [84-5606.12]. The county treasurer shall collect this amount in advance unless the board has allowed the purchaser credit as provided in section 14 [84-5606.15]. The county treasurer shall report to the department on forms prescribed by it, the name of the licensed wholesaler or licensed retailer and the number of packages for which said meter was set and shall forward to the department any amounts collected from said licensee.

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 210, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in five places.

84-5606.14. Resale of insignia prohibited—unused meter settings. No wholesaler or retailer shall resell to any other wholesaler or retailer any insignia purchased by him from the department. Any wholesaler or retailer who has on hand any meter settings at the time of discontinuing his business of selling cigarettes, may apply to the department and be paid the face value of said meter settings less the amount of the expense defrayment allowed by section 11 [84-5606.12].

History: En. Sec. 13, Ch. 140, L. 1969; amd. Sec. 211, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-5606.15. Payment for insignia or affixation within thirty days—bond—new licensees to pay cash. The department shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within thirty (30) days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any thirty (30) day period in the previous calendar year; provided, however, that any newly licensed wholesaler or licensed retailer shall pay on a cash basis for one (1) complete calendar year, after which the department may permit him thirty (30) days to pay for the purchase or affixation of insignia and shall require a bond as hereinabove provided.

History: En. Sec. 14, Ch. 140, L. 1969; amd. Sec. 212, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-5606.16. Proceedings upon failure or refusal to pay tax—penalty. If any person fails or refuses to pay the tax required by this act when due, the department shall proceed to determine the tax due from such information as the department can obtain and shall assess the tax so determined against such person and notify him of the amount thereof. After such notice such tax shall become due and payable, together with a penalty of five per cent (5%) of such tax, or five dollars ($5) per day for each day after the date of such notice, whichever is greater.

History: En. Sec. 15, Ch. 140, L. 1969; amd. Sec. 213, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places in the first sentence.

84-5606.17. Tax meter users to keep certain records—examination of records. All tax meter users shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, also, an accurate record of all sales of cigarettes by such tax meter users, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such tax meter users shall permit the department, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax meter machine has been used as required, or the insignia required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

History: En. Sec. 16, Ch. 140, L. 1969; amd. Sec. 214, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence.

84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met. Every person who sells any packages of cigarettes which does not bear the insignia required by this act, and every person who shall use or consume within this state, any cigarette, unless the same shall be taken from the original package having affixed thereto the insignia required by this act, is guilty of a misdemeanor and shall be punished as hereinafter provided.

History: En. Sec. 17, Ch. 140, L. 1969.

84-5606.19. Place where violations committed deemed a nuisance. Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 18, Ch. 140, L. 1969.

84-5606.20. Shipments or deliveries into or out of state to be reported by carrier—form and contents of report. Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall report in writing such shipments or deliveries to the department, on forms furnished by the department, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the department may require.

History: En. Sec. 19, Ch. 140, L. 1969; amd. Sec. 215, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places.

84-5606.21. Transportation of cigarettes without insignia a misdemeanor unless in interstate commerce—vehicle, cigarettes and equipment subject to seizure and forfeiture. It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any cigarettes which do not bear the insignia required by this act. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation, in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the department, its duly authorized agent, or any sheriff or deputy, or other peace officer, and shall be subject to forfeiture in the manner hereinafter provided.

History: En. Sec. 20, Ch. 140, L. 1969; amd. Sec. 216, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

84-5606.22. Inventory of seized property—application for return of property. Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the department. The person from whom the seizure was made, or any other person claiming an interest in the property seized, may apply for its return as provided in sections 95-713 through 95-716, R. C. M. 1947.

History: En. Sec. 21, Ch. 140, L. 1969; amd. Sec. 217, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the end of the first sentence.

84-5606.23. Investigations, inquiries and hearings authorized—testimony under oath—subpoena powers—finding and order to be made and filed. The department and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The director,

or his authorized agent, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. The director, or his agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the department and open for public inspection.

History: En. Sec. 22, Ch. 140, L. 1969; amd. Sec. 110, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning and near the end of the section; and substituted "director, or his" for "board, or its" at the beginning of the second and third sentences.

84-5606.24. Hearing or rehearing before state tax appeal board. Any person aggrieved by any action of the department or its duly authorized agents, under the provisions of this act, may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within thirty (30) days after such action of the department or its authorized agents. The board shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days' notice in writing to the person or persons to be investigated.

History: En. Sec. 23, Ch. 140, L. 1969; amd. Sec. 111, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places; and inserted "state tax appeal" before board in the middle of the first sentence.

84-5606.25. Appeal to district court—notice of appeal—perfecting appeal within thirty days—bond—hearing date. Any person aggrieved by any action or decision of the department, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decisions of the department, of which the appellant is aggrieved. Such appeal shall be perfected within thirty (30) days after notice of any action or decision of the department, and shall be taken by serving a notice of appeal upon the department and filing the same with the clerk of said court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs of such appeal. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days' notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require.

History: En. Sec. 24, Ch. 140, L. 1969; amd. Sec. 218, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in four places.

84-5606.26. Department's duties and powers—arrest, entry of complaint and lawful search and seizure authorized. The department is charged with the duty of administering and enforcing the provisions of this act, and the director and his agents, are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to lawfully search and seize and use as evidence, any unlawful or unlawfully possessed license, stamp or insignia found in the possession of any person or place.

History: En. Sec. 25, Ch. 140, L. 1969; amd. Sec. 112, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section; and substituted "director and his agents" for "the board, its members and agents" near the middle of the section.

84-5606.27. Promulgation of rules and regulations. The department shall have the power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof. All such rules, regulations and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee; be published cumulative annually, and maintained in full as a public record.

History: En. Sec. 26, Ch. 140, L. 1969; amd. Sec. 219, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" at the beginning of the section.

84-5606.28. County attorneys and peace officers to assist in enforcement of act—appointment of additional assistants and division authorized—presumption of violation. In the enforcement of this act, the department may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the department in the enforcement of this act; and the board is hereby authorized to appoint such additional assistants, and to establish an additional division of cigarette enforcement, as may be required to carry out the provisions of this act. Whenever any cigarettes are found in the place of business of any unlicensed wholesaler, retailer or other person, without the insignia affixed and canceled, or not marked as having been received by the unlicensed wholesaler, retailer or person within the preceding seventy-two (72) hours the presumption shall be that such cigarettes are kept therein in violation of the provisions of this chapter.

History: En. Sec. 27, Ch. 140, L. 1969; amd. Sec. 220, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-5606.29. Department entitled to sue for unpaid tax and costs—treble damages. In the case of any violation of this chapter, the department shall be entitled to sue, in the district where the department main-

tains its principal office for the amount of the unpaid tax and costs, including reasonable expense of the department in effecting collection of the unpaid tax. Where the court finds the failure to pay the tax has been willful, the court must, in addition, assess damages in treble the amount of the tax found to be due.

History: En. Sec. 28, Ch. 140, L. 1969; amd. Sec. 221, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in three places in the first sentence.

84-5606.30. Employment of clerical and field assistants—disposition of taxes—war veterans' compensation fund abolished. The department is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this law. All moneys collected under the provisions of subdivision (2) of section 84-5606, less the expense of collecting all the taxes levied, imposed and assessed by said section 84-5606, shall be paid to the state treasurer and deposited as follows: fifty per cent (50%) in the general fund, fifteen per cent (15%) in the long-range building program account in the sinking fund, and thirty-five per cent (35%) in the long-range building program account in the bond proceeds and insurance clearance fund. All taxes levied, imposed and assessed under the provisions of subdivision (3) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund and shall, while any of the bonds hereafter issued and sold for the purpose of paying an honorarium, or adjusted compensation, to the residents of Montana who were in military service in the military forces of the United States in World War I or World War II, or any of the interest thereon, remain unpaid, be available for the payment thereof.

All taxes levied, imposed and assessed under the provisions of subdivision (4) of said section 84-5606 shall, when collected, be paid to the state treasurer and credited to a subfund in the sinking fund, which shall, while any of the bonds hereafter issued and sold, in addition to the bonds authorized by said Initiative Measure No. 54, as originally enacted, or any of the interest upon such additional bonds, remain unpaid, be used only for the payment thereof, and of the expenses of administration of this act.

The War Veterans' Compensation Fund established by Initiative No. 54, as amended by chapter 44, Laws of 1957, is abolished and all moneys in the fund are transferred to a subfund in the bond proceeds and insurance clearance fund. When all veterans' honoraria authorized by law have been paid, such moneys shall be transferred to the two (2) accounts in the sinking fund established by this section.

After all of the outstanding War Veterans' Compensation Bonds and World War I Compensation Bonds have been paid or redeemed, or after the necessary funds have been set aside for their payment or redemption, the balance of the proceeds theretofore collected under the provisions of subdivisions (3) and (4) of said section 84-5606 shall be transferred to the sinking fund account provided for in section 79-2203, R. C. M. 1947.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973.

Amendments

The 1971 amendment substituted the provisions for apportionment at the end of the second sentence of the first paragraph for a provision requiring deposit in the general fund of all moneys collected under subdivision (2) of sec. 84-5606.

The 1973 amendment substituted "department" for "board" at the beginning of the section.

Effective Date

Section 6 of Ch. 222, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 5, 1971.

84-5606.31. Violation of act a misdemeanor unless otherwise provided —penalties. Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars ($100), or more than five hundred dollars ($500), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the department for a period of one (1) year.

History: En. Sec. 30, Ch. 140, L. 1969; amd. Sec. 223, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the end of the section.

Separability Clause

Section 31 of Ch. 140, Laws 1969 read "The provisions of this act shall be severable and if any of its provisions shall be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

Repealing Clause

Section 32 of Ch. 140, Laws 1969 read "Sections 84-5601 through 84-5605, R. C. M. 1947, and sections 84-5607 through 84-5623, R. C. M. 1947, are repealed."

84-5607 to 84-5623. Repealed.

Repeal

Sections 84-5607 to 84-5623 (Secs. 7 to 23, Ch. 289, L. 1947; Sec. 16, Initiative No. 54, L. 1951, p. 781; Sec. 1, Ch. 123, L. 1953; Secs. 4 to 6, Ch. 18, L. 1957; Sec. 7, Ch. 44, L. 1957; Sec. 2, Ch. 222, L. 1957; Sec. 209, Ch. 147, L. 1963; Sec. 7, Ch. 270, L. 1963; Sec. 6, Ch. 318, L. 1967), relating to the administering of the cigarette tax, were repealed by Sec. 32, Ch. 140, Laws 1969.

CHAPTER 58—PRODUCTION CREDIT ASSOCIATIONS—TAXATION

Section
84-5801. Production credit associations—assessment and payment.

84-5801. Production credit associations—assessment and payment. Every production credit association organized under the provisions of section 1131d of title 12, United States Codes annotated shall be assessed for and pay taxes upon all real and personal property owned by such association, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained by deducting from the amount of loans, including loans secured by mortgage on real estate or personal property, the amount of such loans discounted, and any indebtedness representing money borrowed for use as moneyed capital. Said moneyed capital shall be taxed at the same rate and take the same

classification as shares of stock in a national bank or moneyed capital coming into substantial competition therewith.

The secretary or managing agent of every such association shall furnish to the assessor of the county in which the principal office of such association is located, within five (5) days after demand therefor, a statement in such detail as the department of revenue or its agent may require, verified by his oath of the resources and liabilities of such association as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year. If such secretary or managing agent shall fail to make the statement hereby required, the department of revenue or its agent shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such association. The department of revenue or its agent shall thereupon make an assessment of the real estate and personal property owned by such association, and of the moneyed capital employed in the business of such association which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such association to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

History: En. Sec. 1, Ch. 35, L. 1951; amd. Sec. 113, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in the first three sentences of the second paragraph.

CHAPTER 59—MICACEOUS MINERAL MINES—LICENSE TAXES

Section
84-5902. Persons subject to tax.
84-5903. Quarterly payment.
84-5904. Statement filed with state department of revenue.
84-5905. Records.
84-5906. Quarterly statement—payment of tax.
84-5907. Failure to file statement—determination of tax—collection.

84-5902. Persons subject to tax. Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates are mined, extracted or produced, must, for the year 1951 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state department of revenue, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, in an amount equal to five (5) cents per ton of two thousand (2,000) pounds for each and every ton of concentrates mined, extracted or produced by such person during such year.

History: En. Sec. 2, Ch. 50, L. 1951; amd. Sec. 224, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the middle of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

84-5903. Quarterly payment. Such annual license tax as imposed by section 84-5902 shall be paid in quarterly installments for the quarters ending, respectively, March thirty-first, June thirtieth, September thirtieth and December thirty-first of each year, beginning with the quarter ending March 31, 1951, and the amount of such license tax due for each such quarter shall be paid to the state department of revenue within thirty (30) days after the end of each of such quarter.

History: En. Sec. 3, Ch. 50, L. 1951; amd. Sec. 225, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of the section.

84-5904. Statement filed with state department of revenue. Each and every person engaged in or carrying on the business specified in section 84-5902, must, at the date when this act becomes effective, but not later than thirty (30) days thereafter, and every person who shall, after the date this act becomes effective, engage in such business, must immediately upon engaging therein, file with the state department of revenue a certificate and statement on forms prescribed by the state department of revenue, which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants within this state; the name and address of the managing agent in this state if a corporation, joint-stock company or association; or if a firm or copartnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal officers; and such other information as the state department of revenue may deem necessary.

History: En. Sec. 4, Ch. 50, L. 1951; amd. Sec. 226, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-5905. Records. Every such person shall keep a record in such form as the state department of revenue may require of all such products mined or produced by him in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state department of revenue, its agents or employees.

History: En. Sec. 5, Ch. 50, L. 1951; amd. Sec. 227, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places; and deleted "members" before "agents or employees" at the end of the section.

84-5906. Quarterly statement—payment of tax. Each and every person must, within thirty (30) days after the quarter ending March 31, 1951, and within thirty (30) days after the end of each following quarter, make out, on forms prescribed by the state department of revenue, and deliver to the state department of revenue, a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite or any other micaceous minerals or hydrous silicates mined or produced by such person, during each month of such quarter and during the whole

quarter, and such other information as said board may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty (30) days, and at the same time such statement is delivered to the state department of revenue, pay to the state department of revenue the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one mine in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 50, L. 1951; amd. Sec. 228, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-5907. Failure to file statement—determination of tax—collection. If any person shall fail, neglect or refuse to file any statement required by section 84-5906 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent (25%) thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent (12%) per annum from the date of the making of such statement by the state department of revenue until paid. Upon request of the state department of revenue, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 7, Ch. 50, L. 1951; amd. Sec. 229, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 60—MIGRATORY PERSONAL PROPERTY—TAXATION

Section

84-6008. Assessment of personal property brought into the state—exceptions.
84-6012. Livestock brought into state—notice to department of revenue or its agent.
84-6013. Collection of tax on livestock.
84-6014. Intention to move livestock from one county to another—notice—proration of tax.

84-6008. Assessment of personal property brought into the state—exceptions. Any personal property, including livestock, brought, driven or

coming into this state at any time during the year which is used in the state for hire, compensation or profit; or if the owner and/or the user of the property is engaged in gainful occupation or business enterprise in the state; or the property otherwise comes to rest and becomes a part of the general property of the state, shall be subject to taxation and shall be assessed for all taxes, levied or leviable for that year in the county in which the same shall thus be, in the same manner and to the same extent except as hereinafter otherwise provided, as though such property had been in the county on the regular assessment date; provided that such property has not been regularly assessed for the year in some other county of the state; provided further that nothing herein contained shall be construed into authority to assess or levy any tax against any merchant or dealer within this state on goods, wares or merchandise brought into the county to replenish the stock of such merchant or dealer, in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date; provided further, that this act shall not apply to motor vehicles brought, driven or coming into this state by any nonresident migratory bona fide agricultural workers temporarily employed in agricultural work in Montana where said motor vehicles are used exclusively for transportation of agricultural workers.

History: En. Sec. 1, Ch. 41, L. 1953; amd. Sec. 4, Ch. 290, L. 1967.

Amendments

The 1967 amendment substituted "which is used in * * * property of the state" for "and which shall remain in the state for a period not less than thirty (30) days" before "shall be subject"; deleted "and remain" after "thus be"; deleted "and" after "county of the state"; substituted "any" for "an additional" after "assess or levy"; and substituted "in addition to * * * assessment date" for "so long as such addition does not materially increase the inventory or stock which has been duly assessed to such merchant or dealer as of the regular assessment date" before the third proviso.

Cross-References

Multistate tax compact, sec. 84-6701.

Purchase from Dealer

Where new truck was brought into the state subsequent to the first day of January as replacement to a dealer's stock and therefore exempt from taxation under this section, truck was not subject to personal property taxation to the purchaser of the vehicle at the time of purchase, since he was not the owner of the truck on the date fixed by law for the assessment of property. Schwartz v. Berg, 147 M 178, 411 P 2d 736.

DECISIONS UNDER FORMER LAW

Motor Vehicle Inventory

State board of equalization would be enjoined from assessing cars or trucks brought into state as dealer's inventory after assessment date since dealer would be taxed thereby in violation of proviso in former statute limiting subsequent tax assessments to material increases in inventory only. Hardin Auto Co. v. Alley, 149 M 1, 422 P 2d 346.

84-6009. Repealed.

Repeal

This section (Sec. 2, Ch. 41, L. 1953), which dealt with tax laws in relation to listing of personal property, was repealed by Sec. 6, Ch. 290, Laws 1967.

84-6012. Livestock brought into state—notice to department of revenue or its agent. The owner or the agent, manager or foreman of any person, corporation, or association bringing livestock into this state after the first Monday in March shall immediately after said livestock crosses the

state line, forward to the department of revenue or its agent in the county into which the livestock is moved, a registered letter, which letter shall contain the name of the owner of such livestock, of the number thereof, the brand thereon, and the ages of the same, together with the time and place at which said livestock was brought across the state line, provided, that the Montana livestock sanitary board at least once each month furnish, from its own records to the department of revenue or its agent in the county into which such livestock is moved, a list of the number and kind of livestock so moved, together with the name of the owner thereof.

History: En. Sec. 5, Ch. 41, L. 1953; amd. Sec. 114, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places; and made a minor change in phraseology.

Cross-References

Sanitary board abolished and functions transferred, sec. 82A-1304.

84-6013. Collection of tax on livestock. The department of revenue or its agent upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first Monday in March in any year, shall immediately proceed under the provisions of section 84-4201.

History: En. Sec. 6, Ch. 41, L. 1953; amd. Sec. 115, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" for "county assessor" at the beginning of the section.

84-6014. Intention to move livestock from one county to another—notice—proration of tax. If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the department of revenue or its agent in the initial county a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the department or its agent shall prorate the tax on such livestock in conformity with the provisions of sections 84-5202 to 84-5208, inclusive.

History: En. Sec. 7, Ch. 41, L. 1953; amd. Sec. 116, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue or its agent for references to the county assessor in two places.

CHAPTER 61—UNITED STATES PROPERTY—TAXATION

84-6101. Property of United States held under contract, etc.

Cross-References

Multistate tax compact, sec. 84-6701.

CHAPTER 62—MINES OR WELLS PRODUCING NATURAL GAS OR PETROLEUM —NET PROCEEDS TAX

Section
84-6202. Statement of yield, penalty, extension of time.
84-6203. Net proceeds—how computed.
84-6204. Deduction of drilling costs and capital expenditures.
84-6205. Assessment of royalties.
84-6206. False or fraudulent reports—procedure in case of.
84-6207. Transmission of net proceeds valuations to county assessor.
84-6208. County assessors to compute taxes.
84-6209. Penalty for failure to make statement—estimate of net proceeds.
84-6211. Statement required on dissolution of corporation during taxpaying year.
84-6212. Examination of records by department of revenue.
84-6213. Lien of tax and penalty—enforcement of payment.

84-6202. Statement of yield, penalty, extension of time. Every person engaged in mining upon any mine whatsoever containing natural gas, petroleum, or other crude or mineral oil must on or before the thirty-first day of March in each year make out and deliver to the state department of revenue a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each mine owned or worked by such person during the next preceding calendar year, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership. Such statement shall show the following:

1 to 7. * * * [Same as parent volume.]

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section.

This penalty shall be in addition to penalties provided in section 84-6209.

History: En. Sec. 2, Ch. 135, L. 1955; amd. Sec. 1, Ch. 159, L. 1969; amd. Sec. 117, Ch. 405, L. 1973.

Amendments

The 1969 amendment added the last three paragraphs.

The 1973 amendment substituted references to the state department of revenue for references to the state board of equalization throughout the section.

84-6203. Net proceeds—how computed. The state department of revenue shall calculate and compute from said returns the gross product

yielded from such mine, and its gross value in dollars and cents for the year covered by the statement, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross products thereof the following, to wit:

1 to 4. * * * [Same as parent volume.]

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures, except as provided in section 84-6204; and such expenditures shall not include the salaries, or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 3, Ch. 135, L. 1955; amd. Sec. 230, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section.

84-6204. Deduction of drilling costs and capital expenditures. The state department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow ten per cent (10%) of such cost each year for a period of ten (10) years, provided, however, the operator or producer may elect to amortize the cost over a period of two (2) years if the well is less than three thousand (3,000) feet deep.

The department shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana.

History: En. Sec. 4, Ch. 135, L. 1955; amd. Sec. 231, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization near the beginning of each paragraph.

84-6205. Assessment of royalties. The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: Upon receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state department of revenue shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded or accrued during such preceding calendar year, and the same shall be taxed as net proceeds of mines.

History: En. Sec. 5, Ch. 135, L. 1955; amd. Sec. 232, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the middle of the section.

84-6206. False or fraudulent reports—procedure in case of. If any such report required by this act contains any willfully false or fraudulent statement as to the gross amount received by any person so engaged in

mining as aforesaid, for any mine's product, then the said state department of revenue shall compute the gross value of such mine's product, and such gross value shall be based upon the market value at the point of production. Should there be no quotation covering any particular product, then the state department of revenue shall fix the value of such gross product in such manner as may seem to be equitable.

History: En. Sec. 6, Ch. 135, L. 1955; amd. Sec. 233, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

84-6207. Transmission of net proceeds valuations to county assessor. On or before the first day of July in each year the state department of revenue shall transmit to the county assessor of each county in which such mines are situated, the valuation of the net proceeds of such mines for the purpose of taxation, as the same have been determined and fixed by the state department of revenue, and the lists of royalties assessed under the provisions of section 84-6205. The county assessor shall enter the same upon an assessment roll called "Assessment Roll of Net Proceeds of Mines," the form of which shall be prescribed by the state department of revenue in conformity with the provisions of this act. The royalty assessments shall be entered by the county assessor under the name of the operator, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the owners of such royalty individually as well as against the operator.

History: En. Sec. 7, Ch. 135, L. 1955; amd. Sec. 234, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6208. County assessors to compute taxes. Immediately after the county board of commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests.

History: En. Sec. 8, Ch. 135, L. 1955; amd. Sec. 1, Ch. 80, L. 1963; amd. Sec. 235, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "board of commissioners" for "board of equalization" near the beginning of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

84-6209. Penalty for failure to make statement—estimate of net proceeds. If any person shall refuse or neglect to make and deliver, under oath, to the state department of revenue any statement required by this act, or to comply with any requirements of this act, the state department of revenue must cause such refusal to be noted upon the assessment roll opposite the name of such person, and must make an estimate of the cubic feet of natural gas, barrels of petroleum or other crude or mineral oil mined and treated or sold by such person, and upon such estimate shall fix and determine the value of the net proceeds of said mine as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state department of revenue shall have the power to subpoena and examine under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state department of revenue as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1000), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 135, L. 1955; amd. Sec. 236, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-6211. Statement required on dissolution of corporation during taxpaying year. Every person who shall cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by this act, and pay the tax due for such period as it transacted business, on or before the date of such cessation of business. The state department of revenue may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 11, Ch. 135, L. 1955; amd. Sec. 237, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

84-6212. Examination of records by department of revenue. The state department of revenue shall have the right and power, at any time, to examine all books, records, papers and documents of such person pertaining to such business, in order to verify the statements made by such person, and if, from such examination, or from other information, said state department of revenue finds any statement, or any material part thereof, willfully false or fraudulent, said state department of revenue must assess in the same manner as provided for in section 84-6203.

History: En. Sec. 12, Ch. 135, L. 1955; amd. Sec. 238, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6213. Lien of tax and penalty—enforcement of payment. The taxes and/or penalties on such net proceeds must be levied as the levy of

other taxes is provided for, and every such tax and/or penalty is a lien upon the mine from which the natural gas, petroleum, or crude or mineral oil is mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such natural gas, petroleum, or crude or mineral oil; provided, however, that such personal or real property is owned by or under lease by the person who extracted said natural gas, petroleum, or other crude or mineral oil.

The tax and/or penalty on such net proceeds may be collected, and the payment thereof enforced, by the seizure and sale of the personal property upon which the said tax and/or penalty is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax and/or penalty is collected.

History: En. Sec. 13, Ch. 135, L. 1955; amd. Sec. 2, Ch. 159, L. 1969.

Amendments

The 1969 amendment inserted "and/or penalties" and "and/or penalty" after "taxes" and "tax" where the references appear.

CHAPTER 63—IMPORTERS TAX ON GASOLINE PURCHASED OUTSIDE STATE AND USED IN STATE

Section
84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report.
84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification.
84-6307. Failure or refusal to make and file return or false return—department of revenue to prepare statement.

84-6301. Gallonage tax on gasoline in fuel tanks in excess of twenty gallons purchased outside state and used in state—exception—arrangement to buy equal amount of gas in state—monthly report. Every importer who brings into this state in the fuel tanks of any motor vehicle more than twenty (20) gallons of gasoline, purchased outside the state and used to operate the vehicle upon the public highways and streets of the state, shall pay the state gallonage tax on all such gasoline in excess of twenty (20) gallons unless, under an arrangement approved by the state department of revenue, he shall purchase within the state gasoline equal to such excess. Within thirty (30) days after the close of each month, he shall file with the state department of revenue a report, on such forms and under such rules and regulations as the state department of revenue may prescribe, of all such gasoline imported by him so used within this state, and shall at the same time pay to the state department of revenue the amount of tax due for such month.

History: En. Sec. 1, Ch. 174, L. 1955; amd. Sec. 239, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in four places.

84-6305. Definition of other words and terms.

Compiler's Notes

Section 84-1801 referred to in this section, was repealed by Sec. 20, Ch. 369, Laws of 1969. For a similar provision in current law, see section 84-1846.

84-6306. Penalty for failure, neglect, or refusal to make statement or pay tax—notification—additional penalty for failure to comply after notification. If any importer fails, neglects, or refuses to make any statement required for any month, or to pay the license tax due for any month, within the time prescribed for the filing of such statement or the payment of such tax, there shall automatically accrue a penalty equal to one-tenth of one cent (.1¢) on each gallon of gasoline purchased during that month, the amount of such penalty shall in no case be less than five dollars ($5.00), or, if no purchases were made, a penalty of five dollars ($5.00), such penalty to be paid or collected in the manner hereinafter provided.

The state department of revenue shall notify any importer that fails, neglects or refuses to make any statement required for any month within the time prescribed for the filing of such statement or the payment of such tax, of such failure and if the required statement is not filed or payment of tax is not made within ten (10) days from the date of such notification, there shall automatically accrue a penalty equal to one cent (1¢) on each gallon of gasoline purchased during that month, the amount of which penalty shall in no case be less than twenty-five dollars ($25.00), or, if no purchases were made, a penalty of twenty-five dollars ($25.00), such penalty to be paid or collected in the manner hereinafter provided.

History: En. Sec. 6, Ch. 174, L. 1955; amd. Sec. 240, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the second paragraph.

84-6307. Failure or refusal to make and file return or false return—department of revenue to prepare statement. If any importer fails or refuses to make and file a return at the time prescribed in this act, or make, willfully or otherwise, an erroneous, false, or fraudulent statement, the state department of revenue, or its duly appointed agent, shall make the statement from its or his own knowledge and from such information as it or he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes. As a further means of making the statement, the state department of revenue or its duly appointed agent, shall have the power to examine the books, records and papers of such importer, to ascertain the amount of tax due under the provisions of this act. From the statement so made, the state department of revenue shall determine the amount of tax due, if any, and shall add the penalty provided herein for failure to pay the tax or to file the return within the time prescribed for the payment of such tax or the filing of

such return, and shall notify the importer, of the amount of tax and penalty assessed together with a demand for immediate payment of the tax and penalty. If such tax and penalty is not paid within thirty (30) days, the treasurer of the state of Montana shall proceed to collect such tax and penalty in the manner prescribed in section 84-1807.

History: En. Sec. 7, Ch. 174, L. 1955; amd. Sec. 241, Ch. 516, L. 1973.

Compiler's Notes

Section 84-1807 referred to in the last sentence, was repealed by Sec. 20, Ch. 369, Laws of 1969. For present law, see section 84-1858.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

CHAPTER 64—FLIGHT PROPERTY OF AIRLINE COMPANIES—ASSESSMENT AND TAXATION

Section
84-6401. Definitions.
84-6402. Assessment of flight property.
84-6403. Report by airline company.
84-6404. Determination of value.
84-6405. Hearing before the state tax appeal board.
84-6406. Procedure on failure to file statement.
84-6407. Transmission of statement of amount apportioned to counties.
84-6408. Record of assessment and apportionment of properties.
84-6410. Extension of time for making report.

84-6401. Definitions. The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(a) to (c). * * * [Same as parent volume.]

(d) "Flight property" means aircraft fully equipped ready for flight used in air commerce.

(e) to (g). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 249, L. 1955; amd. Sec. 1, Ch. 367, L. 1969.

Amendments

The 1969 amendment deleted "within the state of Montana" from the end of subdivision (d).

84-6402. Assessment of flight property. The flight property of all scheduled airline companies operating in Montana under a certificate of convenience and necessity issued by the United States civil aeronautics board shall be assessed annually by the state department of revenue.

History: En. Sec. 2, Ch. 249, L. 1955; amd. Sec. 242, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

Cross-References

Multistate tax compact, sec. 84-6701.

84-6403. Report by airline company. Every airline company engaged in air commerce in this state shall annually, on or before the first day of May, file with the department of revenue in such form as the department may require, a report under oath, showing the following:

(1) to (11). * * * [Same as parent volume.]

(12) Such other information as the department of revenue may require.

History: En. Sec. 3, Ch. 249, L. 1955; amd. Sec. 243, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in two places in the preliminary clause and in subdivision (12).

84-6404. Determination of value. The department of revenue shall determine the full and true valuation of all flight property of all airlines operating in this state or used by every scheduled airline company in air commerce. This valuation may be ascertained by:

(1) Determining the full and true valuation of all flight property, owned and operated by every scheduled airline company, as an integrated operation; and,

(2) Allocating to the state of Montana, from this total valuation, a valuation which represents this state's proper share of the valuation of the flight property, through the application of ratios, which are indicated in section 84-6403, subsections (8), (9), (10) and (11), against the total valuation.

(3) After making such assessment, the department shall give written notice thereof to the person or persons to whom the assessment is made.

History: En. Sec. 4, Ch. 249, L. 1955; amd. Sec. 2, Ch. 367, L. 1969; amd. Sec. 244, Ch. 516, L. 1973.

Amendments

The 1969 amendment substituted "of all airlines operating in this state" for "operated" after "all flight property" and deleted "in this state" at the end of the first sentence and rewrote the second sentence, which read, "In determining the valuation apportioned to this state of such flight property, the board may consider the proportion of total tonnage in the state, total time in equated plane hours, number of revenue ton miles and number of arrivals and departures as required to be reported under section 84-6403."

The 1973 amendment substituted "department of revenue" for "board of equalization" at the beginning of the section; and added subdivision (3).

Effective Date

Section 3 of Ch. 367, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 15, 1967.

DECISIONS UNDER FORMER LAW

Basis for Assessment

Under former statute providing that board should determine valuation of all flight property used by scheduled airline in air commerce in state, assessment of airline using three types of aircraft but only one type in state was to be made only on that portion of airline's business arising directly from aircraft used in state, and depreciated value of aircraft used in state was the base for taxation. Western Air Lines, Inc. v. Michunovich, 149 M 347, 428 P 2d 3, cert. den. 389 U S 952, 88 S Ct 336.

84-6405. Hearing before the state tax appeal board. After such assessment is made the state tax appeal board shall give at least ten (10) days' written notice thereof to the person or persons to whom the assessment is made, together with time and place of hearing thereon, at which time and place such person or persons, or any taxpayer may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 5, Ch. 249, L. 1955; amd. Sec. 245, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the state tax appeal board for references to the state board of equalization; and made a minor change in phraseology.

84-6406. Procedure on failure to file statement. If any airline company shall refuse or neglect to make the statement required by this act to the department of revenue, or shall refuse or neglect to permit an inspection and examination of its property, its records, books, accounts, or other papers when requested by the department or shall refuse or neglect to appear before the department when required so to do, the department shall assess the property of such airline company according to its best judgment on available information, and may add to the assessment a penalty not exceeding ten per cent (10%) of the assessment, and such airline company shall be estopped to question or impeach the action or determination of the board thereon.

History: En. Sec. 6, Ch. 249, L. 1955; amd. Sec. 246, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in four places.

84-6407. Transmission of statement of amount apportioned to counties. On or before the second Monday in July, the department shall apportion such assessment to the counties in or through which the airline operates. The county assessor must enter the amount of the assessment apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county. The assessment shall be assigned to class 7 having a taxable value of forty per cent (40%) of assessed value.

History: En. Sec. 7, Ch. 249, L. 1955; amd. Sec. 247, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the first sentence.

84-6408. Record of assessment and apportionment of properties. The state department of revenue must keep a record of all such assessments and apportionments.

History: En. Sec. 8, Ch. 249, L. 1955; amd. Sec. 248, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

84-6410. Extension of time for making report. The department of revenue for good cause may extend for not to exceed thirty (30) days the time for making a report as required under section 84-6403.

History: En. Sec. 10, Ch. 249, L. 1955; amd. Sec. 249, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 65—LICENSE TAXES—RACING ASSOCIATIONS

(Repealed—Section 15, Chapter 196, Laws of 1965; Section 6, Chapter 216, Laws of 1967)

84-6502 to 84-6504. Repealed.

Repeal

These sections (Secs. 2 to 4, Ch. 57, L. 1961), relating to the taxing of racing associations, were repealed by Sec. 6, Ch. 216, Laws 1967.

CHAPTER 66—PROPERTY TAX ON HOUSE TRAILERS

Section
84-6601. Definitions.
84-6604. Penalty for failure to display or produce declaration, sticker or receipt.
84-6605. Act restricted to trailers subject to taxation.
84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions.
84-6607. State department of revenue to make regulations.

84-6601. Definitions. As used in this act:

(1) "Mobile home" means forms of housing known as "trailers," "house trailers" or "trailer coaches" exceeding eight (8) feet in width or thirty-two (32) feet in length designed to be moved from one place to another by an independent power connected thereto.

(2) "House trailer" means; (a) A trailer or semitrailer other than a mobile home as defined in this section which is designed, constructed and equipped as a dwelling place, living abode or sleeping place (either permanently or temporarily) whether mobile or stationary; or

(b) a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a house trailer, whether mobile or stationary.

(c) "dealer" means a person engaged in the distribution or sale of mobile homes.

History: En. Sec. 1, Ch. 275, L. 1965; amd. Sec. 4, Ch. 296, L. 1967.

Amendments

The 1967 amendment substantially rewrote this section. For previous text, see parent volume.

84-6604. Penalty for failure to display or produce declaration, sticker or receipt. (1) Whoever makes a false or fraudulent declaration of destination, or, when required, fails to execute a declaration of destination or fails to produce a declaration of destination or tax paid receipt, if a tax paid receipt is required, is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine of not more than five hundred dollars ($500), or both.

(2) Whoever fails to display a property tax paid sticker or to produce a property tax paid receipt from fifteen (15) days after the due date for personal property taxes of one (1) year to the due date for personal property taxes of the next year shall constitute a misdemeanor punishable by a fine of not less than ten dollars ($10) nor more than fifty dollars ($50) or confinement in the county jail for not more than thirty (30) days or both such fine and imprisonment.

History: En. Sec. 4, Ch. 275, L. 1965; amd. Sec. 7, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted subsection (1); designated the old section as new subsection (2); substituted "Whoever fails" for "The failure" before "to display"; and deleted "the failure" before "to produce."

84-6605. Act restricted to trailers subject to taxation. The provisions of this act shall apply only to those mobile homes and house trailers, as defined in this act, subject to assessment and taxation under section 84-406 and section 84-6008.

History: En. Sec. 5, Ch. 275, L. 1965; amd. Sec. 8, Ch. 296, L. 1967.

Amendments

The 1967 amendment inserted "mobile homes and" before "house trailers."

84-6606. Verified declaration of destination on out-of-state mobile homes—delivery and affixing to vehicle—obtaining tax receipt—exemptions. (1) whoever brings a mobile home into the state of Montana shall immediately upon arrival in the state execute a written declaration verified under oath stating the destination of the mobile home and such other information as the state department of revenue shall require and shall deliver the original of the declaration to whoever is on duty at the nearest port of entry station, state vehicle weight station or such other places and persons as the state department of revenue may prescribe. He shall also immediately upon arrival in the state of Montana affix a copy of the declaration to the mobile home at a conspicuous place.

(2) Whoever moves a mobile home from a point within the state of Montana to another point within or without the state of Montana shall first:

(a) Execute the declaration provided for in subsection (1) of this section, deliver the original of it to the treasurer of the county in which the move originates or to such other person as the state department of revenue shall prescribe and affix a copy of it to the mobile home to be moved at a conspicuous place;

(b) Obtain from the county treasurer of the county in which the move originates a receipt showing payment in full of property taxes due with respect to that mobile home to the date it is moved.

(3) The provisions of subsection (2) (b) of this section shall not apply whenever a person moves a mobile home:

(a) From a point without to a point within the state of Montana.

(b) Between places of business of dealers within or without the state of Montana.

(c) From the place of business of a dealer to a point within or without the state of Montana.

History: En. Sec. 5, Ch. 296, L. 1967; amd. Sec. 250, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in three places.

84-6607. State department of revenue to make regulations. The state department of revenue may make reasonable rules and regulations necessary for or as an aid to effectuation of the purposes of this act.

History: En. Sec. 6, Ch. 296, L. 1967; amd. Sec. 251, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 67—MULTISTATE TAX COMPACT

Section
84-6701. Compact adopted—text.
84-6702. Montana compact commissioner—director of revenue.
84-6703. Alternate.
84-6704. Advisory committee—members—reimbursement—meetings.

84-6701. Compact adopted—text. The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein. Article VIII of the Multistate Tax Compact relating to interstate audits is specifically adopted.

ARTICLE I. PURPOSES.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

ARTICLE II. DEFINITIONS.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any government unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any

right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. ELEMENTS OF INCOME TAX LAWS.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. DIVISION OF INCOME.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, co-operative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis

of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. ELEMENTS OF SALES AND USE TAX LAWS.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates. Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. THE COMMISSION.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice-chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and func-

tions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice-chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. UNIFORM REGULATIONS AND FORMS.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform

tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. INTERSTATE AUDITS.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: provided that such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought

is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. ARBITRATION.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency

represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

ARTICLE X. ENTRY INTO FORCE AND WITHDRAWAL.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. EFFECT ON OTHER LAWS AND JURISDICTION.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III [paragraph] (2) of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII [paragraph] (9) may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI [paragraph] (3) may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or of the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 17, L. 1969; amd. Sec. 1, Ch. 249, L. 1973.

Compiler's Notes

The following states have adopted the Multistate Tax Compact: Alabama, Alaska, Arkansas, Florida, Hawaii, Idaho, Illinois, Indiana, Michigan, Missouri, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Texas, Utah and Wyoming.

Title of Act

An act to adopt and implement the Multistate Tax Compact dealing with taxes paid by business firms.

Amendments

The 1973 amendment deleted "in the form substantially as follows" from the end of the first sentence of the preliminary paragraph; and added the second sentence to the preliminary paragraph.

Effective Date

For effective date of this act, see Article X, paragraph 1.

Cross-References

Advisory council appointed to comply with compact, sec. 82A-1803(2).

Cities and towns—taxation and license, secs. 84-4701 to 84-4737.

Income tax, secs. 84-4901 to 84-4958.

Levy of taxes, secs. 84-3801 to 84-3810.

84-6702. Montana compact commissioner—director of revenue. The director of the state department of revenue shall represent this state on the multistate tax commission.

History: En. Sec. 2, Ch. 17, L. 1969; amd. Sec. 118, Ch. 405, L. 1973.

Amendments

The 1973 amendment substituted "director of the state department of revenue" for "chairman of the state board of equalization."

84-6703. Alternate. The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him.

History: En. Sec. 3, Ch. 17, L. 1969; amd. Sec. 119, Ch. 405, L. 1973.

Amendments

The 1973 amendment deleted "who must be a member of the state board of equalization" from the end of the section.

Repealing Clause

Section 120 of Ch. 405, Laws 1973 read "Sections 84-211, 84-429.10, 84-443, 84-444, 84-445, 84-446, 84-447, 84-453, 84-502, 84-503, 84-4732, 84-4733, 84-4734, and 84-4735, R. C. M. 1947, are repealed."

84-6704. Advisory committee — members — reimbursement — meetings. There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one (1) from each of

the two (2) major political parties appointed by the senate committee on committees, and two (2) members of the house of representatives, one (1) from each of the two (2) major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the legislative assembly shall be reimbursed for actual and necessary expenses incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three (3) times in each year. The committee may consider any and all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon.

History: En. Sec. 4, Ch. 17, L. 1969.

Cross-References

Advisory committee abolished, sec. 82A-1806.

Board of equalization to appoint advisory council, sec. 82A-1803(2).

CHAPTER 68—TOBACCO TAX (CIGARETTES EXCLUDED)

Section
84-6801. Definitions.
84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted.
84-6803. Wholesaler to precollect and pay tax.
84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty.
84-6805. Unlawful sales and offers to sell—penalty.
84-6806. Wholesaler to retain five per cent defrayment—refunds.
84-6807. Rule-making power.

84-6801. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) The word "department" shall mean the state department of revenue of the state of Montana.

(2) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization or association, however formed.

(3) The word "cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(4) The words "sale" or "sell" shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution, in any manner, or by any means whatever of tobacco products, other than cigarettes.

(5) The word "wholesaler" shall mean any person who purchases tobacco products, other than cigarettes, directly from the manufacturer, or who purchases tobacco products, other than cigarettes, from any other person who purchases from the manufacturer, and who acquires such products for the purpose of bona fide sales to retail dealers, or who services retail outlets by the maintenance of an established place of business for

the purchase of tobacco products, other than cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of tobacco products. The word "retailer" shall mean any person other than a wholesaler who is engaged in the business of selling tobacco products to the ultimate consumer.

(6) The words "wholesale price" shall mean the established price for which a manufacturer sells a tobacco product, other than cigarettes, to a wholesaler or unclassified acquirer before any discount or other reduction.

History: En. Sec. 1, Ch. 12, Ex. L. 1969; amd. Sec. 252, Ch. 516, L. 1973.

Title of Act

An act providing for the imposition of a tax on the sale of all tobacco products, not including cigarettes.

Amendments

The 1973 amendment substituted subdivision (1) for a subdivision defining "board" as the state board of equalization.

84-6802. Direct tax on retail customer—advance payment—notice in seller's premises—amount of tax—products excepted. (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person such payment shall be considered as an advance payment and shall be added to the price of tobacco products, other than cigarettes, and recovered from the ultimate consumer or user. Any person selling tobacco products, other than cigarettes, at retail shall state or separately display in the premises where such products are sold, a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon tobacco products, other than cigarettes, sold or possessed in this state, a tax of twelve and one-half per cent (12-½%) of the wholesale price of such products to the wholesaler, excepting therefrom such said products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana.

History: En. Sec. 2, Ch. 12, Ex. L. 1969.

84-6803. Wholesaler to precollect and pay tax. The tax imposed shall be precollected and paid by the wholesaler to the board prior to the sale of tobacco products, other than cigarettes, to the purchaser from the wholesaler.

History: En. Sec. 3, Ch. 12, Ex. L. 1969.

84-6804. Wholesaler's sale without prepayment a misdemeanor—injunctive penalty. Any wholesaler who shall sell any tobacco products, other than cigarettes, without first making payment of the tax provided for by this act in the manner and at the time specified shall be guilty of a misdemeanor, and further shall be enjoined by an action pursued in the district court of the county of Lewis and Clark, Montana from making

further sale of tobacco products, other than cigarettes, for a period not less than one (1) month nor more than one (1) year.

History: En. Sec. 4, Ch. 12, Ex. L. 1969.

84-6805. Unlawful sales and offers to sell—penalty. It shall be unlawful for any person, individual, firm or corporation to sell or offer to sell any tobacco products subject to this tax without the tax having been prepaid as provided for in this act. Violation of this section shall constitute a misdemeanor punishable by a fine of not more than five hundred dollars ($500) or imprisonment for not more than six (6) months.

History: En. Sec. 5, Ch. 12, Ex. L. 1969.

84-6806. Wholesaler to retain five per cent defrayment—refunds. The taxes specified in this act that are paid by the wholesaler, shall be paid to the department in full less a five per cent (5%) defrayment for his collection and administrative expense and shall be deposited by the department in the long-range building sinking fund number 338766. Refunds of the tax paid shall be made as provided in section 84-726, R. C. M. 1947, in cases where the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in two places.

84-6807. Rule-making power. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by this act.

History: En. Sec. 7, Ch. 12, Ex. L. 1969; amd. Sec. 254, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board."

CHAPTER 69—CORPORATION INCOME TAX

Section
84-6901. Application of license and income taxes.
84-6902. Short title—administration of act.
84-6903. Rate of tax imposed—income from sources within state defined—alternative tax.
84-6904. Offset for license taxes—income tax collected considered license tax.
84-6905. Information return—period for assessment of tax.
84-6906. License tax sections incorporated by reference.
84-6907. Employment of personnel—rules and regulations.
84-6908. Disposition of revenue.

84-6901. Application of license and income taxes. It is the intent of the legislative assembly that the corporation license tax shall be applied to all corporations subject to taxation under chapter 15, Title 84, R. C. M. 1947. The income tax provided by this act shall be applied to corporations that are not taxable under chapter 15, Title 84, R. C. M. 1947, but are taxable under an income tax.

History: En. Sec. 1, Ch. 82, L. 1971.

Title of Act

An act to subject corporations to an income tax if they are not subject to the corporation license tax; and providing an effective date.

Cross-References

Corporation license tax, sec. 84-1501 et seq.

Industrial income tax, sec. 84-4901 et seq.

Multistate tax compact, sec. 84-6701.

84-6902. Short title—administration of act. This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state department of revenue.

History: En. Sec. 2, Ch. 82, L. 1971; amd. Sec. 255, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

84-6903. Rate of tax imposed—income from sources within state defined—alternative tax. (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in section 84-1501, R. C. M. 1947, upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under chapter 15, Title 84, R. C. M. 1947, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, or interstate or foreign commerce.

(3) Pursuant to article III, section 2, of the multistate tax compact (Title 84, chapter 67, R. C. M. 1947), any corporation required to file a return under this act, and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana does not exceed one hundred thousand dollars ($100,000) may elect to pay a tax of one-half of one per cent (.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to article IV, sections 16 and 17, of the multistate tax compact.

History: En. Sec. 3, Ch. 82, L. 1971; amd. Sec. 1, Ch. 367, L. 1973.

Amendments

The 1973 amendment added subsection (3).

84-6904. Offset for license taxes—income tax collected considered license tax. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under chapter 15, Title 84, R. C. M. 1947. In the event that taxes, interest and penalties have been or will be assessed against, paid by or collected from a corporation under this chapter, which assessment, payment or collection should have been made under chapter 15, Title 84, R. C. M. 1947, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under chapter 15, Title 84, R. C. M. 1947, as of the date they were made.

History: En. Sec. 4, Ch. 82, L. 1971.

84-6905. Information return—Period for assessment of tax. When a corporation formerly subject to tax under chapter 15, Title 84, R. C. M. 1947, becomes subject to tax under this act, it shall file an information

return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under chapter 15, Title 84, R. C. M. 1947, and not under this act. For years subsequent to the year in which the change occurs, the tax will be assessed under this act.

History: En. Sec. 5, Ch. 82, L. 1971.

84-6906. License tax sections incorporated by reference. The provisions of the following sections of chapter 15, Title 84, R. C. M. 1947, are incorporated into this act by reference and made a part hereof.

(1) That part of section 84-1501, R. C. M. 1947, which defines the term "corporation" and that part which specifies the classes of organizations whose income shall not be taxed.

(2) Sections 84-1501.4, 84-1502, 84-1503, 84-1504, 84-1505, 84-1505.1, 84-1506, 84-1507, 84-1508, 84-1508.1, 84-1508.2, 84-1509, 84-1510, 84-1512, 84-1513, 84-1516, 84-1517, and 84-1518, R. C. M. 1947, except that the term "gross income" shall be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax," "license tax," "license fee," "corporation excise tax," or like words appear, referring to the tax imposed under chapter 15, Title 84, R. C. M. 1947, there shall be substituted the words "income tax."

History: En. Sec. 6, Ch. 82, L. 1971.

Compiler's Notes

Section 84-1501.4, referred to in subdivision (2) and exempting state banks from taxation, was repealed by Sec. 2, Ch. 23, Laws 1971. Banks are now subject to taxation under sec. 84-1501.6.

84-6907. Employment of personnel—rules and regulations. The state department of revenue may employ personnel and adopt rules, regulations and forms as the department finds necessary to place this act in operation and to carry out its provisions.

History: En. Sec. 7, Ch. 82, L. 1971; amd. Sec. 256, Ch. 516, L. 1973.

Amendments

The 1973 amendment substituted references to the department of revenue for references to the state board of equalization in two places.

84-6908. Disposition of revenue. The net revenue from the tax imposed by this act shall be disposed of in the same manner as revenue from the corporation license tax as provided in section 84-1901, R. C. M. 1947.

History: En. Sec. 8, Ch. 82, L. 1971.

Effective Date

Section 9 of Ch. 82, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 27, 1971.

CHAPTER 70—RESOURCE INDEMNITY TRUST ACCOUNT

Section
84-7001. Short title.
84-7002. Legislative policy.
84-7003. Definitions.
84-7004. Creation of account in trust and legacy fund.
84-7005. Gross yield from mines to be reported—form—contents.
84-7006. Tax on mineral production.
84-7007. Payment of tax.
84-7008. Receipt for tax—disposition of funds.

84-7009. Investment of resource indemnity trust account—expenditures—minimum balance.
84-7010. Purpose of fund usage.
84-7011. Effective date of tax.
84-7012. Procedure in case of failure to file statement.
84-7013. Restricted access to records.

84-7001. Short title. This act shall be known and may be cited as "The Montana Resource Indemnity Trust Act."

History: En. 84-7001 by Sec. 1, Ch. 497, L. 1973.

Title of Act

An act to create the resource indemnity trust account in the trust and legacy fund and to provide for the funding of the account by imposing a tax on the gross value of product of all nonrenewable resource extracting industries.

84-7002. Legislative policy. It is the policy of this state to provide security against loss or damage to our environment from the extraction of nonrenewable natural resources. Recognizing that the total environment consists of our air, water, soil, flora, fauna, and also of those social, economic, and cultural conditions that influence our communities and the lives of our individual citizens, it is necessary that this state be indemnified for the extraction of those resources. Therefore, it is the purpose of this chapter to provide for the creation of a resource indemnity trust in order that the people and resources of Montana may long endure.

History: En. 84-7002 by Sec. 2, Ch. 497, L. 1973.

84-7003. Definitions. As used in this act:

(1) "Person" means and includes every individual, partnership, firm, association, joint-stock company, syndicate and corporation.

(2) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(3) "Gross value of product" means the market value of any merchantable mineral extracted or produced during the taxable year.

(4) "Total environment" means air, water, soil, flora, fauna, and also the social, economic, and cultural conditions that influence communities and individual citizens.

(5) "Department" means department of revenue.

History: En. 84-7003 by Sec. 3, Ch. 497, L. 1973.

84-7004. Creation of account in trust and legacy fund. For the purpose of carrying out this act there is a resource indemnity trust account in the trust and legacy fund. The resource indemnity account shall be credited with all moneys received as herein provided.

History: En. 84-7004 by Sec. 4, Ch. 497, L. 1973.

84-7005. Gross yield from mines to be reported—form—contents. A person who engages in or carries on the business of mining, extracting, or producing a mineral from any quartz vein or lode, placer claim, dump or

tailings, or other place or source, shall on or before March 31 of each year make out a statement of gross yield of the mineral from each mine owned or worked by that person during the year preceding January 1 of the year in which the statement is made, and the value thereof. This form shall be in the form prescribed by the department, and shall be verified by the oath of the person, or the manager, superintendent, agent, president, or vice-president of the corporation, association, or partnership, if any, and shall be delivered to the department on or before March 31. The statement shall show the following:

(1) The name and address of the owner or lessee or operator of the mine.

(2) The description and location of the mine.

(3) The quantity of minerals extracted, produced, and treated or sold from the mine during the period covered by the statement.

(4) The amount and character of the mineral and the total yield of the mineral from the mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of the ores or mineral products or deposits measured by standard units of measurement, yielded to the person engaged in mining.

(5) The gross yield or value in dollars and cents.

History: En. 84-7005 by Sec. 5, Ch. 497, L. 1973.

84-7006. Tax on mineral production. The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be twenty-five dollars ($25), together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding, at the rate of one-half of one per cent (½ of 1%) of the amount of gross value of product at the time of extraction from the ground, if in excess of five thousand dollars ($5,000).

History: En. 84-7006 by Sec. 6, Ch. 497, L. 1973.

84-7007. Payment of tax. The tax imposed by this act shall be paid by each person to which the tax applies on or before March 31 on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time that the statement of yield is filed with the department.

History: En. 84-7007 by Sec. 7, Ch. 497, L. 1973.

84-7008. Receipt for tax—disposition of funds. The department shall issue a receipt for the tax and promptly turn the tax over to the state treasurer for deposit in the resource indemnity trust account of the trust and legacy fund.

History: En. 84-7008 by Sec. 8, Ch. 497, L. 1973.

84-7009. Investment of resource indemnity trust account—expenditures—minimum balance. All moneys paid into the resource indemnity trust account shall be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust account shall annually be added thereto until it has reached the sum of ten million dollars ($10,000,000). Thereafter only the net earnings may be appropriated and expended until the account reaches one hundred million dollars ($100,000,000). Thereafter all net earnings and all receipts shall be appropriated by the legislature and expended provided that the balance in the account may never be less than one hundred million dollars ($100,000,000).

History: En. 84-7009 by Sec. 9, Ch. 497, L. 1973.

84-7010. Purpose of fund usage. Any funds made available under this act shall be used and expended to improve the total environment and rectify damage thereto.

History: En. 84-7010 by Sec. 10, Ch. 497, L. 1973.

84-7011. Effective date of tax. The tax imposed by this act shall be first imposed for the whole calendar year 1973, and shall be based on the statement of yield prescribed in section 84-7005.

History: En. 84-7011 by Sec. 11, Ch. 497, L. 1973.

84-7012. Procedure in case of failure to file statement. If any person shall fail, refuse or neglect to make and file a statement and return within the time prescribed, the department shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the tax due from, and to be paid by such person.

History: En. 84-7012 by Sec. 12, Ch. 497, L. 1973.

84-7013. Restricted access to records. The information furnished by the producer to the department of revenue for the purpose of this act shall be treated as provided in section 84-1507, R. C. M. 1947.

History: En. Sec. 13, Ch. 497, L. 1973.

REVISED CODES OF MONTANA

VOLUME 6
Part 1
1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 1) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 1) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1965, 1967, 1969, 1971 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1973 by
The Allen Smith Company
Indianapolis, Indiana

NEW LAWS IN VOLUME 6 (Part 1)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Fiduciary permitted to hold property received though not qualified, 86-327.
Flood control, county and municipal participation, 89-3301 to 89-3313.
Public utility secured transactions and financing statements, 87A-9-302.1 to 87A-9-302.3.
Water conservation board,
Director of board, 89-103.1 to 89-103.3.
Transfer of records, etc., from Carey land act board and state engineer, 89-103.4 to 89-103.8.

ENACTED IN 1967

Flood control, county and municipal participation, 89-3309.1, 89-3314.
Imitation Indian articles, 85-301 to 85-304.
Water conservation board, additional powers, 89-132.1.
Water Resources Act, 89-101.1, 89-101.2.
Weather modification and control, 89-310 to 89-331.

ENACTED IN 1969

Conservancy districts, 89-3401 to 89-3449.
Sale of commodities, 90-170 to 90-194.
Standard weights and measures, state sealer, 90-153 to 90-169.
Trustee's annual statement to beneficiaries, 86-513.

ENACTED IN 1971

Dams and dikes, jurisdiction of water resources board, 89-702.1.
Floodway management and regulation, 89-3501 to 89-3515.

ENACTED IN 1973

Door-to-door sales, right to cancel, 85-501 to 85-506.
Institutional funds, management, 86-801 to 86-809.
Underground water, well logs and hearings before board, 89-2928.1, 89-2934.1.
Unfair trade practices and consumer protection, 85-401 to 85-418.
Water Use Act, 89-865 to 89-8-102.
Weather modification, precautions in research and development, 89-312.1.
Weighing devices, licensing, 90-160.1.

AMENDMENTS IN VOLUME 6 (Part 1)

Apple grading, 90-201.
Conservancy districts, 89-3404, 89-3405, 89-3407, 89-3411, 89-3426.
Dam and dike construction, 89-702, 89-702.1.
Drainage districts,
Bonds, 89-2501, 89-2502.
Taxes and assessments, 89-2330 to 89-2330.2, 89-2332 to 89-2334, 89-2337, 89-2338, 89-2348, 89-2401, 89-2405, 89-2410.
Employment security commission, 87-117, 87-118, 87-120.
Financing statement, 87A-9-402 to 87A-9-407.
Flood control and water conservation, county and municipal participation, 89-3301 to 89-3304, 89-3306 to 89-3312.

Floodway management and regulation, 89-3503 to 89-3506, 89-3508.

Imitation Indian articles, segregation, 85-302.

Irrigation districts,
- Board's power to purchase or lease storage and irrigation works, 89-1301.
- Bonds, 89-1701, 89-1705, 89-1706, 89-1708.
- Commissioners of district, 89-1208.
- Organization and incorporation, 89-1201.
- Records, inspections and reports, 89-2107.
- Taxes and assessments, 89-1801, 89-1804, 89-1811, 89-1812.

Public utility secured transactions and financing statements, 87A-9-302.1, 87A-9-302.2.

Trade-marks, forgery, counterfeiting or unlawful use, 85-105.

Trusts and trustees, 86-511.

Unemployment compensation,
- Accounts in agency fund, 87-111.
- Benefits, 87-103 to 87-107.
  - Reciprocal benefits, 87-129.
- Contributions, 87-109.
- Covered employment, 87-110.
- Definition of terms, 87-148, 87-149.
- Penalties, 87-145.
- Reciprocity as to collection, 87-136.

Waters and water rights,
- Commissioners to administer distribution of water under established rights, 89-1001.
- Ground water appropriations, 89-2911, 89-2915, 89-2917, 89-2918.
- State division of water rights and water projects, 89-102, 89-103, 89-103.3, 89-105, 89-115, 89-118.

Weather modification, 89-310, 89-312, 89-314, 89-318, 89-324.

Yellowstone River waters, 89-907 to 89-909, 89-912, 89-914.

MONTANA REVISED CODES

TITLE 85—TRADE-MARKS AND TRADE PRACTICES

Chapter 1. Trade-marks, 85-105.
3. Sale of imitation Indian articles, 85-301 to 85-304.
4. Unfair trade practices and consumer protection, 85-401 to 85-418.
5. Door-to-door sales, 85-501 to 85-506.

CHAPTER 1—TRADE-MARKS

Section 85-105. Penalties.

85-105. (4290) **Penalties.** The penalty for forging, counterfeiting, or unlawful using of trade-marks is a misdemeanor.

History: En. Sec. 3164, Pol. C. 1895; re-en. Sec. 2040, Rev. C. 1907; re-en. Sec. 4290, R. C. M. 1921; amd. Sec. 22, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "is a misdemeanor" for "is provided in section 94-35-226" at the end of the section.

CHAPTER 3—SALE OF IMITATION INDIAN ARTICLES

Section 85-301. Definitions.
85-302. Imitation Indian articles to be clearly designated and segregated.
85-303. Designation of authentic Indian articles.
85-304. Violation as misdemeanor.

85-301. Definitions. As used in this act:

(1) "Indian" means a person who is enrolled or who is a lineal descendant of one enrolled upon an enrollment listing of the bureau of Indian affairs, or upon the enrollment listing of a recognized Indian tribe, domiciled in the United States.

(2) "Imitation Indian arts or crafts articles" means those made by machine, or made wholly out of synthetic or artificial materials, or articles which are not made by Indian labor or workmanship.

History: En. Sec. 1, Ch. 42, L. 1967.

Title of Act

An act regulating the retail sale of imitation American Indian arts and crafts articles.

85-302. Imitation Indian articles to be clearly designated and segregated. No person shall distribute, sell, or offer for sale in this state any imitation American Indian arts or crafts articles unless the articles are at all times clearly and legibly designated as imitation. All imitation articles shall be physically segregated from authentic Indian articles for display purposes.

History: En. Sec. 2, Ch. 42, L. 1967; amd. Sec. 1, Ch. 52, L. 1973.

Amendments

The 1973 amendment added the second sentence.

85-303. Designation of authentic Indian articles. Only those articles bearing a registered trade-mark or label of authentic Indian labor or workmanship may be deemed authentic Indian arts or crafts articles.

History: En. Sec. 3, Ch. 42, L. 1967.

85-304. Violation as misdemeanor. Any person who violates this act is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 42, L. 1967.

CHAPTER 4—UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION

Section 85-401. Definitions.
85-402. Unfair competition and deceptive practices unlawful.
85-403. Weight given to federal interpretation—rules interpreting unfair competition and deception.
85-404. Exemptions from act.
85-405. Action by department to restrain unlawful acts.
85-406. Restoration of property unlawfully acquired.
85-407. Powers of receiver appointed by court—proof of damages—court jurisdiction.
85-408. Private action for damages—treble damages—notice to public agencies—attorney fees—prior judgment as evidence.
85-409. Assurance of voluntary compliance.
85-410. Investigative demand on unlawful practices.
85-411. Department power to subpoena—administer oaths—conduct hearings.
85-412. Service of process.
85-413. Judicial enforcement of department orders—contempt.
85-414. Violation of injunction—willful use of unlawful method—fraud.
85-415. Dissolution or forfeiture of corporate franchise for violation.
85-416. Assistance and actions by county attorney—reports.
85-417. County attorney's investigator.
85-418. Short title.

85-401. Definitions. As used in this act:

(1) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(2) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value, wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(4) "Examination" of documentary material includes the inspection, study, or copying of such material, and the taking of testimony under oath or acknowledgment in respect to any such documentary material or copy thereof.

(5) "National advertising" means any advertising run simultaneously in five or more states and over which a local advertiser has no control.

(6) "Department" means the department of business regulation created in section 82A-401.

History: En. Sec. 1, Ch. 275, L. 1973.

Title of Act

An act to be cited as The Montana Unfair Trade Practices and Consumer Protection Act of 1973; prohibiting unfair trade practices and providing investigation procedures and penalties for violations of the act.

85-402. Unfair competition and deceptive practices unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

History: En. Sec. 2, Ch. 275, L. 1973.

85-403. Weight given to federal interpretation—rules interpreting unfair competition and deception. (1) It is the intent of the legislature that in construing section 2 [85-402] of this act due consideration and weight shall be given to the interpretations of the federal trade commission and the federal courts relating to section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended; and

(2) The department may make rules and regulations interpreting the provisions of section 2 [85-402] of this act. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5 (a) (1) of the Federal Trade Commission Act [15 U.S.C., 45 (a) (1)], as amended.

History: En. Sec. 3, Ch. 275, L. 1973.

85-404. Exemptions from act. Nothing in this act shall apply to:

(1) actions or transactions permitted under laws administered by the Montana public service commission acting under statutory authority of this act or the United States.

(2) acts done by the retail merchants, publisher, owner, agent, or employee of a newspaper, periodical or radio or television station or advertising agency in the publication or dissemination of an advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement and did not have a direct financial interest in the advertised product or service.

(3) National advertising shall be exempt from this act.

History: En. Sec. 4, Ch. 275, L. 1973.

85-405. Action by department to restrain unlawful acts. Whenever the department has reason to believe that any person is using, has used, or is about to knowingly use any method, act or practice declared by section 2 [85-402] of this act to be unlawful, and that proceeding would be in the public interest, the department may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice, upon the giving of appropriate notice to that person. The notice must state generally the relief sought and be served in accordance with section 13 [85-413] of this

act in at least twenty (20) days before the hearing of the action. The action may be brought in the district court in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the district court of Lewis and Clark county. The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this act, and such injunctions shall be issued without bond.

History: En. Sec. 5, Ch. 275, L. 1973.

85-406. Restoration of property unlawfully acquired. The court may make such additional orders or judgment as may be necessary to restore to any person any moneys or property, real or personal, which may have been acquired by means of any practice in this act declared to be unlawful, including the appointment of a receiver or the revocation of a license or certificate authorizing that person to engage in business in this state, or both.

History: En. Sec. 6, Ch. 275, L. 1973.

85-407. Powers of receiver appointed by court—proof of damages—court jurisdiction. When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes and property of every description, derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. Any person who has suffered damages as a result of the use of employment of any unlawful practices and submits proof to the satisfaction of the court that he has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses. In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court. The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required.

History: En. Sec. 7, Ch. 275, L. 1973.

85-408. Private action for damages—treble damages—notice to public agencies—attorney fees—prior judgment as evidence. (1) Any person who purchases or leases goods or services primarily for personal, family or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by section 2 [85-402] of this act, may bring an individual, but not a class action under rules of civil procedure in the district court in which the seller or lessor resides or has his principal place of business or is doing business, to re-

cover actual damages or two hundred dollars ($200), whichever is greater. The court may, in its discretion, award up to three (3) times the actual damages sustained and may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment or order of the court made under section 5 [85-405] of this act shall be prima facie evidence in an action brought under section 8 [this section] of this act that the respondent used or employed a method, act or practice declared unlawful by section 2 [85-402] of this act.

History: En. Sec. 8, Ch. 275, L. 1973.

85-409. Assurance of voluntary compliance. In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the act from any person who has engaged or was about to engage in any such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of district court in which the alleged violator resides or has his principal place of business, or the district court of Lewis and Clark county. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to section 5 [85-405].

History: En. Sec. 9, Ch. 275, L. 1973.

85-410. Investigative demand on unlawful practices. (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be

stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court where the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clerk county.

History: En. Sec. 10, Ch. 275, L. 1973.

85-411. Department power to subpoena—administer oaths—conduct hearings. To accomplish the objectives and to carry out the duties prescribed by this act, the department, in addition to other powers conferred upon it by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, prescribe forms and promulgate rules and regulations as may be necessary, which rules and regulations shall have the force of law; provided that none of the powers conferred by this act may be used for the purpose of compelling any natural person to furnish testimony or evidence which might tend to incriminate him or subject him to a penalty or forfeiture; and provided further that information obtained pursuant to the powers conferred by this act shall not be made public or disclosed by the department or its employees beyond the extent necessary for law enforcement purposes in the public interest.

History: En. Sec. 11, Ch. 275, L. 1973.

85-412. Service of process. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substitute service may be made in the manner provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 275, L. 1973.

85-413. Judicial enforcement of department orders—contempt. If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the department, the department may, after notice, apply to the district court and, after hearing thereon, request an order:

(1) granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(2) vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(3) granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

History: En. Sec. 13, Ch. 275, L. 1973.

85-414. Violation of injunction—willful use of unlawful method—fraud. (1) Any person who violates the terms of an injunction issued under section 5 [85-405] of this act shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars ($10,000) per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction, and the cause continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any action brought under section 5 [85-405] of this act, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by section 2 [85-402] of this act, the department, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than five hundred dollars ($500) per violation.

(3) Any person who engages in a fraudulent course of conduct declared unlawful by section 2 [85-402] of this act shall, upon conviction, be fined not more than two thousand dollars ($2,000), imprisoned for not more than one (1) year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this act.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of section 2 [85-402] of this act.

History: En. Sec. 14, Ch. 275, L. 1973.

85-415. Dissolution or forfeiture of corporate franchise for violation. Upon petition by the department, the district court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section 5 [85-405] of this act.

History: En. Sec. 15, Ch. 275, L. 1973.

85-416. Assistance and actions by county attorney—reports. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act, or, the county attorney may institute and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the department within thirty (30) days of the final disposition of the matter.

History: En. Sec. 16, Ch. 275, L. 1973.

85-417. County attorney's investigator. The county attorney in first and second class counties may designate an employee to act as a full-time investigator.

History: En. Sec. 17, Ch. 275, L. 1973.

Separability Clause

Section 18 of Ch. 275, Laws 1973 read "If any provision of this act is declared unconstitutional, or the application to any person or circumstances is held invalid, the constitutionality of the remainder of the act and its applicability to other persons and circumstances is not affected."

85-418. Short title. This act shall be cited as the "Montana Unfair Trade Practices and Consumer Protection Act of 1973."

History: En. Sec. 19, Ch. 275, L. 1973.

CHAPTER 5—DOOR-TO-DOOR SALES

Section 85-501. Purpose.
85-502. Definitions.
85-503. Buyer's right to cancel home solicitation sale—time allowed—notice—return of goods.
85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation.
85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer.
85-506. Redelivery of goods—care of goods by buyer.

85-501. Purpose. The purpose of this act is to afford consumers, subjected to high pressure door-to-door sales tactics, a "cooling-off" period.

History: En. Sec. 1, Ch. 426, L. 1973.

Title of Act

An act to provide for a three (3) day cooling-off period on door-to-door sales contracts.

85-502. Definitions. As used in this act:

(1) "Consumer transaction" means a transaction where the money, property, or service which is the subject of the transaction is primarily for personal, family or household purposes.

(2) "Home solicitation sale" means a consumer transaction in which the purchase price is twenty-five dollars ($25) or more, and the seller or a person acting for him, is a person doing business who engages in a personal solicitation of a sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. A sale which but for the fact that it is a cash sale would be a home solicitation sale shall be deemed a home solicitation sale if the seller makes or provides a loan to the buyer or obtains or assists in obtaining a loan for the buyer to pay any part of the purchase price. The term "home solicitation sale" does not include a transaction

(a) made pursuant to a pre-existing revolving charge account, or pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or

(b) in which the buyer has a right of cancellation pursuant to federal law.

History: En. Sec. 2, Ch. 426, L. 1973.

85-503. Buyer's right to cancel home solicitation sale—time allowed —notice—return of goods. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a home solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale.

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A home solicitation sale may not be canceled if in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer.

History: En. Sec. 3, Ch. 426, L. 1973.

85-504. Notice to buyer of right to cancel—form and contents—notice of cancellation. (1) The seller shall furnish the buyer a notice which shall contain the statement set forth in paragraph (a) and printed in capital and lower case letters of not less than twelve (12) point bold-faced type with the seller's name and business address and the statement set forth in paragraph (b),

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within three days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within three days after you sign the contract.

(date)

(b) CONTRACT SIGNED

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section the buyer or any other person obligated for any part of the purchase price may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by section 3 [85-503] shall begin to run from the time the seller complies with this section.

History: En. Sec. 4, Ch. 426, L. 1973.

85-505. Repayment to buyer canceling—liability for failure to repay—retention of goods by buyer. (1) Except as provided in this section, within ten (10) days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment and if the buyer is successful in his action therefor the court shall also award him one hundred dollars ($100) plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled.

History: En. Sec. 5, Ch. 497, L. 1973.

85-506. Redelivery of goods—care of goods by buyer. (1) Except as provided by subsection (4) of section 5 [85-505], within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, forty (40) days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received.

History: En. Sec. 6, Ch. 426, L. 1973.

TITLE 86—TRUSTS AND USES

Chapter 3. Trustee's obligations—sale, mortgage or lease of trust property, 86-327.
5. Trusts for benefit of third persons—obligations, powers and rights of trustees, 86-511, 86-513.
8. Management of institutional funds, 86-801 to 86-809.

CHAPTER 1—TRUSTS AND USES IN RELATION TO REAL PROPERTY

86-103. (6785) Transfer to one for money paid by another, etc.

Conveyances between Persons in Confidential Relationships

In suit by beneficiaries to recover from deceased's brother stock allegedly belonging to estate, exception to general rule raising presumption of gift in favor of person to whom property is transferred when person making payment and transferee stand in confidential relation did not apply to transfer from deceased to brother. Detra v. Bartoletti, 150 M 210, 433 P 2d 485.

CHAPTER 2—TRUSTS IN GENERAL—NATURE AND CREATION

86-210. (7887) Involuntary trust resulting from fraud, etc.

Parent and Child

Constructive trust would not be imposed on lands deeded son by aged mother in absence of evidence that son gained land by accident, mistake, undue influence, violation of trust or other wrongful act or by constructive fraud. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

Pastoral Relationship

Evidence supported findings of fraud and undue influence constituting pastor an involuntary trustee of land conveyed to him, where the grantor had made substantial contributions to grantee's ministry, had financed a missionary trip for him, and had conveyed the land, intending it for use in the church work, on grantee's promise to reconvey a portion of it, but the grantee had failed to keep promises to take grantor on the missionary trip and to reconvey a portion of the land, and the conveyance of land, prepared by grantee's attorney, had been to grantee and himself personally rather than to his church; under these circumstances, cancellation of the conveyance was proper. Hensley v. Stevens, 156 M 486, 481 P 2d 694.

Transfer in Contemplation of Death

Where deceased, engaged in cattle partnership with his sister and her husband, during his last illness transferred bank account and interest in cattle to his sister and her husband, obligating them to pay all bills and expenses surrounding his illness and transfer some money to deceased's son, the sister and her husband were involuntary trustees of the property transferred from which they had paid expenses of deceased's last illness. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 488.

CHAPTER 3—TRUSTEE'S OBLIGATIONS—SALE, MORTGAGE OR LEASE OF TRUST PROPERTY

Section 86-327. Fiduciary permitted to hold property received though not qualified investment.

86-327. Fiduciary permitted to hold property received though not qualified investment. In the absence of express provisions to the contrary in the trust instrument, any fiduciary may hold during the life of the trust all securities or other property, real or personal, received into or acquired by the trust from any source, excepting such as are pur-

chased by the fiduciary in administering the trust, even though such securities or other property are not qualified investments.

History: En. Sec. 1, Ch. 66, L. 1965.

Title of Act

An act relating to the retention by trustees of securities and other property received into the trust.

CHAPTER 5—TRUSTS FOR BENEFIT OF THIRD PERSONS—OBLIGATIONS, POWERS AND RIGHTS OF TRUSTEES

Section 86-511. Compensation of trustee.
86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement.

86-511. (7918) Compensation of trustee. When a declaration of trust, created by will or otherwise, is silent upon the subject of or the rate or amount of compensation, the trustee is entitled to such compensation as may be reasonable under the circumstances.

History: En. Sec. 3031, Civ. C. 1895; re-en. Sec. 5403, Rev. C. 1907; amd. Sec. 7918, R. C. M. 1921; amd. Sec. 1, Ch. 65, L. 1965. Cal. Civ. C. Sec. 2274. Field Civ. C. Sec. 1206.

Amendment

The 1965 amendment inserted "created by will or otherwise"; inserted "or the rate or amount of" before "compensation"; substituted "such compensation as may be reasonable under the circumstances" for "the same compensation as an executor"; and deleted second and third sentences, for text of which see parent volume.

86-513. Trustee appointed by will, deed or agreement—income trust beneficiary—annual statement. The trustee or trustees appointed by any will, deed or agreement heretofore or hereafter executed shall mail or deliver at least annually to each income trust beneficiary a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust, both principal and income, and upon the request of any such beneficiary shall furnish him an itemized statement of all property then held by such trustee, and may also file any such statement in the district court of the county in which the trustee or one of the trustees resides.

In addition thereto any such trustee or trustees, whenever it or they so desire, may file in the district court of the county in which the trustees or one of the trustees resides an intermediate account under oath showing:

(1) the period covered by the account;

(2) the total principal with which the trustee is chargeable according to the last preceding account or the inventory if there is no preceding account;

(3) an itemized statement of all principal funds received and disbursed during such period;

(4) an itemized statement of all income received and disbursed during such period, unless waived;

(5) the balance of such principal and income remaining at the close of such period and how invested;

(6) the names and addresses of all living beneficiaries, including contingent beneficiaries, of the trust, and a statement as to any such beneficiary known to be under legal disability;

(7) a description of any possible unborn or unascertained beneficiary and his interest in the trust fund.

In addition thereto, after the time for termination of the trust shall have arrived, the trustee or trustees may file a final account in similar manner.

Upon the petition of any settlor or of any beneficiary of such a trust, after due notice thereof to the trustee, the district court in the county where the trustee or one of the trustees resides may direct the trustee or trustees thereof to file in said court such an account at any time subsequent to one year from the day on which such a report was last filed, or if none, then after one (1) year from the inception of the trust.

When any such account shall have been filed, the clerk of the court where filed shall fix a return day therefor and issue a notice as provided for herein. If each of the beneficiaries and the guardians and guardians ad litem, if any, is personally served with a copy of the notice, whether within or outside the state of Montana, at least twenty-five (25) days prior to the return day, then no publication of the notice shall be required; otherwise the trustee or trustees shall cause notice as provided for herein to be given by publishing the same at least once a week for three (3) successive weeks preceding the return day, the first publication to be at least twenty-five (25) days preceding the return day, such publication to be in a newspaper of general circulation in the county, or if none, then in adjoining county. And in any event, at least twenty-five (25) days prior to the return day, a copy of the notice shall be either served upon each beneficiary not represented by guardian or guardian ad litem or mailed to each such beneficiary not so served at such beneficiary's address last known to the trustee; and shall be either served upon each guardian and guardian ad litem, or mailed to each such guardian and guardian ad litem not so served at such guardian's or guardian ad litem's address last known to the trustee. Proof of service of the notice may be made by affidavit, as provided for service of summons in civil actions, or by written admission of service signed by the person served. The notice shall state the time and place for the return day, the name or names of the trustee or trustees who have filed the account, that the account has been filed, that the court is asked to settle such account, and that any objections or exceptions thereto must be filed with the clerk of said court on or before such return day.

Upon or before the return day, any beneficiary of the trust may file his written objections or exceptions to the account filed or to any action of the trustee or trustees set forth therein. The court may appoint either the legal guardian of a beneficiary, or a guardian ad litem to represent the interest of any such beneficiary who is an infant or of

unsound mind or otherwise legally incompetent, or who is yet unborn or unascertained, and such beneficiary shall be bound by any action taken by such representative. Every unborn or unascertainable beneficiary shall be concluded by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of such unborn or unascertainable beneficiary.

At the same time, or at some later day fixed by the court if so requested by one or more of the parties, the court, without the intervention of a jury and after hearing all the evidence submitted, shall determine the correctness of the account and the validity and propriety of all actions of the trustee or trustees set forth therein including the purchase, retention and disposition of any of the property and funds of the trust, and shall render its decree either approving or disapproving the same or any part thereof, and, in addition, may surcharge the trustee or trustees for all losses, if any, caused by negligent or willful breaches of trust.

The decree so rendered shall be deemed final, conclusive and binding upon all the parties interested including all incompetent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal hereinafter stated.

The decree so rendered shall be a final order from which any party in interest may appeal as in civil actions to the district court of the state of Montana.

This chapter shall not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges, trusts created by judgment or decree of a federal court or of the district court when not sitting in probate, liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor shall this chapter apply to executors, administrators or guardians.

The settlor of any trust governed by this chapter may waive any or all of the provisions of this act requiring periodical statements to beneficiaries or may add additional duties in the instrument creating the trust; and any beneficiary entitled to an accounting under this act may waive such an accounting by a separate instrument delivered to the trustee or trustees.

History: En. Sec. 1, Ch. 24, L. 1969.

CHAPTER 6—EXTINGUISHMENT, REVOCATION AND VACATION OF TRUSTS—SUCCESSION

86-601. (7920) Trust—how extinguished.

Life Income

Where sole purpose and object of trust were payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

CHAPTER 8—MANAGEMENT OF INSTITUTIONAL FUNDS

Section 86-801. Definitions.
86-802. Endowment funds subject to appropriation and expenditure.
86-803. Donor's intention restricting expenditure of net appreciation.
86-804. Allowable investments.
86-805. Delegation of investment authority—advisory service.
86-806. Ordinary business care and prudence.
86-807. Release of restrictions in gift instrument.
86-808. Uniformity of construction.
86-809. Citation of act.

86-801. Definitions. In this act:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include

(a) a fund held for an institution by a trustee that is not an institution, or

(b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of

(a) an endowment fund at the time it became an endowment fund,

(b) each subsequent donation to the fund at the time it is made, and

(c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund.

The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

History: En. Sec. 1, Ch. 389, L. 1973.

Title of Act

An act to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.

86-802. Endowment funds subject to appropriation and expenditure. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an

endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 6 [86-806]. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution.

History: En. Sec. 2, Ch. 389, L. 1973.

86-803. Donor's intention restricting expenditure of net appreciation. Section 2 [86-802] does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

History: En. Sec. 3, Ch. 389, L. 1973.

86-804. Allowable investments. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or if the applicable law other than law relating to investment by a fiduciary, **may:**

(1) invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) include all or part of any institutional fund in any pooled or common fund maintained by the institution; and

(4) invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: En. Sec. 4, Ch. 389, L. 1973.

86-805. Delegation of investment authority—advisory service. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) contract with independent investment advisers, investment counsel or managers, banks, or trust companies, so to act; and

(3) authorize the payment of compensation for investment advisory or management services.

History: En. Sec. 5, Ch. 389, L. 1973.

86-806. Ordinary business care and prudence. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long- and short-term needs of the institution in carrying out its educational, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions.

History: En. Sec. 6, Ch. 389, L. 1973.

86-807. Release of restrictions in gift instrument. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: En. Sec. 7, Ch. 389, L. 1973.

Separability Clause

Section 8 of Ch. 389, Laws 1973 read "If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable."

86-808. Uniformity of construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: En. Sec. 9, Ch. 389, L. 1973.

86-809. **Citation of act.** This act may be cited as the "Uniform Management of Institutional Funds Act."

History: En. Sec. 10, Ch. 389, L. 1973.

TITLE 87—UNEMPLOYMENT COMPENSATION

Chapter 1. The unemployment compensation law, 87-103 to 87-107, 87-109 to 87-111, 87-117, 87-118, 87-120, 87-129, 87-136, 87-145, 87-148, 87-149.

CHAPTER 1—THE UNEMPLOYMENT COMPENSATION LAW

Section 87-103. Benefits.
87-104. Duration of benefits.
87-105. Benefit eligibility conditions.
87-106. Disqualification for benefits.
87-107. Claims for benefits.
87-109. Contributions.
87-110. Period, election and termination of employer's coverage.
87-111. Unemployment compensation account—establishment and control.
87-117. Employment security commission—organization.
87-118. Divisions.
87-120. Administration—duties and powers of commission.
87-129. Reciprocal benefit arrangements.
87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.
87-145. Penalties—falsity or willful nondisclosure—violations by employer or agent—violation of act or regulations—wrongfully collecting benefits.
87-148. Definitions.
87-149. Definitions—continued.

87-103. Benefits. (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the division, in accordance with such rules and regulations as the division may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth (1/26) of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of one dollar ($1), shall be rounded to the nearest multiple of one dollar ($1).

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by fifty-two (52) and the average weekly wage, rounded to the nearest cent, thus determined. Fifty per cent (50%) of the

average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of one dollar ($1), shall be computed to the nearest multiple of one dollar ($1).

The minimum weekly benefit amount shall be twelve dollars ($12).

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period, other than the quarter in which his wages were highest, an amount totaling not less than thirteen (13) times his weekly benefit amount.

(d) Wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(e) * * * [Same as parent volume.]

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973.

Amendments

The 1969 amendment made substantial deletions at the beginning and end of the first sentence in subsection (a); rewrote the benefits schedule, generally increasing the amounts payable; increased the maximum weekly benefit from $34 to $42; reduced the minimum weekly benefit from $15 to $13; rewrote subsection (c) to substitute the requirement of earnings totaling one and one-half times the high-quarter earnings for a requirement of $100 in earnings other than in the high quarter; and made numerous minor changes in phraseology.

The 1971 amendment completely rewrote subsections (b) and (c), slightly reducing benefits in the lower wage brackets and slightly increasing benefits in the higher wage brackets, reducing the minimum weekly benefit from $13 to $12, and increasing the maximum weekly benefit from $42 to $47 effective July 1, 1971 and to $52 effective January 1, 1972.

The 1973 amendment substituted "division" for "commission" throughout the section; deleted from subsection (b) first and second paragraphs setting minimum and maximum weekly benefit amounts; added new second, third and fourth paragraphs to subsection (b); substituted "in the quarters of his base period, other than the quarter in which his wages were highest, an amount" in subsection (c) for "in his base period"; and substituted "thirteen (13) times his weekly benefit amount" at the end of subsection (c) for "one and one-half (1½) times his high-quarter wages during his base period including the high quarter."

87-104. Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall be:

(a)(1) Thirteen (13) times his weekly benefit amount if he is qualified as an insured worker as defined in section 87-103 (c), and does not qualify under subsection (2) or (3) below.

(2) Twenty (20) times his weekly benefit amount if in addition to meeting the requirements of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of two (2) quarters in his base period other than the quarter in which his wages were highest.

(3) Twenty-six (26) times his weekly benefit amount if in addition to meeting the requirement of section 87-103 (c), he has been paid wages of one hundred dollars ($100) or more for insured work in each of three (3) quarters in his base period other than the quarter in which his wages were highest.

(4) Extended benefits if he is qualified as provided under the provisions of this subsection.

(a) Definitions.—As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent (4½%).

(3) There is a "national 'off' indicator" for a week if the U. S. Secretary of Labor determines that for each of the three (3) most recent completed calendar months ending before such week, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent (4½%).

(4) There is a "state 'on' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the commission determines, in accordance with the regulations of the U. S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the commission on the basis of his reports to the U. S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U. S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of the

Virgin Islands or of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U. S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the commission, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the commission finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f)(1) Beginning and termination of extended benefit period.—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the commission shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the commission, in accordance with regulations prescribed by the U. S. Secretary of Labor.

(3) The effective date of subsection (a)(4) of this section shall be January 1, 1972.

(b) An individual disqualified by and pursuant to section 87-106, subsections (a), (b) and (c), shall have his maximum weekly duration

reduced by the number of weeks equal to the number of weeks of disqualification.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1. Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971.

Amendments

The 1969 amendment designated the former section as subdivision "(a)," substituted "subsection (2) or (3)" for "subsection (b) or (c)" at the end of subsection (a) (1); redesignated former subsections (a) (b) and (c) as subsections (1), (2) and (3) of subdivision (a); and added subdivision (b).

The 1971 amendment inserted subsection (a) (4) and made minor changes in style.

87-105. Benefit eligibility conditions. An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the commission finds that—

(a) to (d). * * * [Same as parent volume.]

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148 (j)(6) and (7) and section 87-110 (d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity in an institution of higher education (as defined in section 87-148 (n)) shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971.

Amendments

The 1971 amendment added subdivisions (e) and (f); and made a minor change in phraseology.

Burden of Proof

Unemployment compensation claimant has the burden of showing that he is not disqualified from the receipt of benefits. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

Type of Work

Under statute providing that claimant must be available for work and seeking work, claimant was not eligible where all his applications were either for work in which he had no experience or work which he had no prospect of securing; claimant voluntarily removed himself from only then-existing labor market in area for which he was qualified by refusal to accept farm or ranch work because he despised it. Noone v. Reeder, 151 M 248, 441 P 2d 309.

Withdrawal from Labor Market

Claimant, who voluntarily withdrew himself from the active labor market, rendered himself ineligible to receive unemployment compensation benefits. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

87-106. Disqualification for benefits. An individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment for a period of not less than two (2) nor more than five (5) weeks (in addition to and immediately following the waiting period), as determined by the division according to the circumstances in each case; but, he shall not be disqualified if the division finds that:

(1) He left his employment because of personal illness or injury not associated with misconduct, or left his employment upon the advice of a licensed and practicing physician, and after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment, for a period of not less than two (2) nor more than nine (9) weeks (in addition to and immediately following the waiting period), as determined by the division in each case according to the seriousness of the misconduct.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of twelve (12) months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the division. Such disqualification shall continue for the week in which such failure occurred and for not less than two (2) nor more than five (5) weeks in addition to the waiting week which immediately follow such week as determined by the division according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2). * * * [Same as parent volume.]

(d) For any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that—

(1) and (2). * * * [Same as parent volume.]

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the Workmen's Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States, provided, however, that when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145 (d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the

application of provisions in subsection (c) of this section or the application of provisions in section 87-105 (c).

(g) Where retired and receiving retirement compensation paid in whole or in part from funds furnished by an employing unit, which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year, such disqualification to be applied as follows: All wages earned by such individual in the employment from which he has been retired shall not be considered or included in determining his wage credits or weekly benefit amount under sections 87-103 and 87-105. This disqualification does not extend to the receipt of benefits under the Federal Social Security Act, as amended.

(h) For any week wherein claimant leaves her most recent employment during pregnancy, and due to such pregnancy, and such disqualifications shall continue through the period of pregnancy unless claimant presents evidence of her physical ability to work at such employment. At any time after the seventh month of pregnancy a claimant, to establish eligibility, must present evidence of physical ability to work at such employment. Further, at any time during the first two (2) months following childbirth, a claimant, to establish eligibility, must present evidence of her physical ability to work at such employment. In any of the cases set forth hereinbefore, such evidence of eligibility must be in the form of certificate of a duly licensed physician that such claimant is physically able to work at her most recent employment, and such evidence must be presented as often as requested by the division.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 369 and once by Ch. 498. Neither amendatory act mentioned or incorporated the changes made by the other. Since the amendments do not appear to conflict the compiler has made a composite section embodying the changes made by both amendments.

Amendments

The 1965 amendment inserted "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subd. (h); substituted "retired individual" for "individual after such retirement" near the beginning of the present third sentence of subd. (h); inserted "and entitled to receive retirement compensation," following "individual is retired" in the present third sentence of subd. (h); and made a minor change in punctuation.

The 1967 amendment inserted in subdivision (e) (3) a second paragraph reading: "Compensation as set forth in subsection (2) above, which is received as a lump-sum payment for a permanent disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving benefits under this act for any week except the one in which the lump-sum payment is made, providing recipient has earned sufficient new wage credits following settlement."

The 1969 amendment, in subdivision (a), substituted "nor" for "or" in the first sentence; in the second paragraph of item (e) (3), substituted "the date of injury" for "settlement"; and in subdivision (h), substituted "87-103 and 87-105" for "87-103 or 87-105."

Chapter 38, Laws of 1971, added the two provisos to subdivision (e) (2); and deleted the paragraph inserted in subdivision (e) (3) by the 1967 amendment.

Chapter 415, Laws of 1971, included the changes made by Ch. 38; deleted the second sentence of subdivision (a); deleted the second paragraph of subdivision (b) (2); added the second sentence to subdivision (f); deleted former subdivisions (g) and (j); redesignated former subdivisions (h) and (i) as subdivisions (g) and (h); deleted "and no benefit * * * in good faith" after "87-105" in the first sentence

of subdivision (g), formerly subdivision (h); deleted the last sentence of subdivision (h), formerly subdivision (i); and made a minor change in punctuation.

Chapter 369, Laws of 1973, substituted references to the division for references to the commission throughout the section; substituted "receiving" for "entitled to" near the beginning of subsection (g); substituted "which when prorated on a weekly basis, exceeds the average weekly benefit amount paid during the last fiscal year" for "in excess of one hundred dollars ($100.00) per calendar month" in the first sentence of subsection (g); and made a minor change in arrangement.

Chapter 498, Laws of 1973, substituted references to the division for references to the commission; added the phrase following the semicolon in subsection (a); and inserted subsection (a)(1).

Prior Workmen's Compensation Settlement

Claimant was barred from receiving unemployment compensation benefits by reason of prior lump-sum workmen's compensation settlement during the period which lump-sum settlement was intended to cover. Keller v. Reeder, 149 M 322, 425 P 2d 830.

87-107. Claims for benefits. (a) Filing. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

(b) Initial determination. A representative designated by the division, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeals referee which shall make its decisions with respect thereto in accordance with the procedure prescribed in subsection (c) of this section. No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) Appeals referee. To hear and decide disputed claims, the division shall appoint such impartial appeals referee as are necessary for the proper administration of this act, consisting of salaried examiners selected in accordance with section 87-123. No person shall participate on behalf of the division in any case in which he is an interested party. The division may

designate alternates to serve in the absence or disqualification of an appeals referee.

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court; but if such decision is finally modified or reversed to deny benefits, no employer's account shall be charged with benefits so paid. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973.

Amendments

The 1973 amendment substituted "division" for "commission" throughout the

section; substituted "appeals referee" for "appeal tribunal" in the latter part of the first sentence in subsection (b) and in three places in subsection (d); deleted from the end of the first sentence in subsection (b) clauses providing for referral to and decision by the commission in work-stoppage cases; inserted a new second sentence in subsection (b); redesignated the former fourth sentence of subsection (b) as subsection (c); deleted from the end of subsection (b) two sentences providing for suspension of benefits pending appeal from an adverse decision; deleted from the end of the sentence redesignated as subsection (c) a clause providing for payment or denial of benefits in accordance with the decision; added to the end of subsection (c) the clause providing for extension of time for appeal; deleted former subsection (c), relating to decisions by appeal tribunals; deleted from the first sentence of subsection (d) clauses providing for three-member tribunals; deleted from subsection (d) two final sentences relating to absence of members of an appeal tribunal; deleted former subsection (e), relating to review by the commission; added new subsections (e), (f) and (g); and made minor changes in phraseology.

87-108. Procedure and appeals.

Findings of Commission

Finding of unemployment compensation commission that claimant was not available for and seeking work as required by section 87-105 was proper where the evidence showed that claimant quit his job to protect his social security retirement benefits; he knew that his employer would not rehire him if he failed to report off from work; he went to Minnesota to take a rest; and he failed to seek full-time employment. Ollila v. Reeder, 148 M 134, 417 P 2d 473, 475.

Scope of Judicial Review

Under that portion of statute relating to court review, findings of fact by commission, if supported by substantial evidence, are conclusive and confine scope of judicial review to questions of law. Noone v. Reeder, 151 M 248, 441 P 2d 309.

87-109. Contributions. (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149 (c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2). * * * [Same as parent volume.]

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149 (c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 501 (c) (3) of the federal internal revenue code and which are exempt from tax under section 501 (a) of such code may elect to make payments in lieu of contributions; the state and its political subdivisions specifically covered by this act and those electing coverage shall make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

(2) Employers required or eligible to elect to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half (½) of the amount of extended

benefits paid to individuals based on wages paid by such employing unit. If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the division quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(3) Any nonprofit organizations as defined in subsection (b) (1) of this section electing to become liable for payments in lieu of contributions must file with the division a written notice of its election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be for a period of not less than two (2) years.

(A) Any nonprofit organization may terminate its election to make payments in lieu of contributions after two (2) calendar years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b) (1) of this section which has been paying contributions for at least two (2) taxable years may change to payments in lieu of contributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b)(2) of this section. The amount of payments shall be paid in such manner as the division may prescribe.

(c) Experience rating.

The division shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the rate of contributions which shall

apply to him throughout the calendar year in order to reflect said experience and classification. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the division shall take account, each to an equal extent, of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) average annual net percentage declines in total payrolls for the last three (3) years prior to computation date; (2) number of years the employer has paid contributions; and (3) chargebacks to the individual employer account upon the last employer basis. The computation date is hereby fixed as of the close of business on June 30 of the preceding calendar year.

The rates for the first calendar quarter of calendar year 1972 and thereafter, except as hereinafter provided, shall be so fixed that they would, if applied to all employers (except those employers making payments in lieu of contributions) and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately one and five-tenths per centum (1.5%) of the total of all such payrolls.

The division shall determine the contribution rate applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the division and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-due contributions the division shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) The classified contribution rates for the calendar year 1969, and thereafter, except as hereinafter provided, shall be: five-tenths of one per centum (.5%), seven-tenths of one per centum (.7%), nine-tenths of one per centum (.9%), one and one-tenth per centum (1.1%), one and three-tenths per centum (1.3%), one and five-tenths per centum (1.5%), one and seven-tenths per centum (1.7%), one and nine-tenths per centum (1.9%), two and one-tenth per centum (2.1%), two and three-tenths per centum (2.3%), two and five-tenths per centum (2.5%), two and seven-tenths per centum (2.7%), two and nine-tenths per centum (2.9%), and three and one-tenth per centum (3.1%).

(3) No employer shall be assigned a classified contribution rate higher than the second classified rate above the rate which was assigned to him for the last preceding calendar year except for the year 1961 and further as hereinafter provided. This subsection shall not apply when the employer's chargeback ratio exceeds one hundred per cent (100%).

(4) An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years, may have the option of making a voluntary contribution to the unemployment compensation fund to cancel the amount by which the benefit payments charged to him under section 87-109 (c) during the last three (3) completed fiscal years exceed his contributions for the same three (3) years. Such voluntary contribution shall be applied first to cancel the amount by which benefits exceed contributions in the earliest of the three (3) years preceding the computation date, any remaining to cancel the excess in the second earliest year preceding the computation date, and any further remaining to cancel the excess in the most recent year preceding the computation date. Whenever the benefit payments charged to an eligible employer in the last three (3) fiscal years exceed his contributions for the same period, the division shall notify him of the amount of such excess and the rate which would be applicable to him for the ensuing calendar year, if he exercises the option. Such employer must exercise the option of making the voluntary contribution allowed by this section within thirty (30) days after receipt of such notice.

(5) Rates as fixed by the division shall stand and be in effect unless and until the cash reserves in the unemployment compensation trust fund at any time in the future fall below, and remain below, eighteen million dollars ($18,000,000) continuously for a period of one (1) year, then employer rates effective at the beginning of the next succeeding calendar quarter shall be so fixed that they would, if applied to all employers and their total taxable annual payrolls for the preceding calendar year, have yielded total paid contributions equaling approximately two per centum (2%) of the total of all such payrolls, and shall continue at the two per centum (2%) average rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided; if reserves remain below eighteen million dollars ($18,000,000) continuously for a period of two (2) years, then the contribution rate of all employers subject to this act shall return to a uniform rate of three and one-tenth per centum (3.1%) effective at the beginning of the next succeeding calendar quarter, and shall continue at the three and one-tenth per centum (3.1%) rate until cash reserves in the unemployment compensation trust fund exceed twenty-six million dollars ($26,000,000) at which time all employer rates shall again be so fixed to bring an average return of one and five-tenths per centum (1.5%) as in this section hereinabove provided.

(6) The division shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, benefit experience and ratings to the successor employing unit or units.

(7) The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to

their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(8) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(9) No employer's account shall be charged with benefits paid to any claimant in determining the contribution rate of such employer;

(A) If the claimant has been disqualified under section 87-106 (a), (b), (g), or (h), as a result of separation from such employer;

(B) If the claimant left work for nondisqualifying reasons as provided in section 87-106 (a);

(C) Unless the employer has had notice of the claim for the benefits and has been given opportunity for hearing as an interested party in the manner provided in sections 87-107 and 87-108. Written notice of any hearing shall be mailed to employer not less than ten (10) days prior to the date set.

(d) The provisions of this act requiring the payment of contributions by employers subject to this act shall apply only to wages paid up to and including three thousand dollars ($3,000) by an employer to an employee with respect to employment during any calendar year preceding the year 1972.

Payment of contributions shall apply only to wages paid up to and including four thousand two hundred dollars ($4,200) by an employer to an employee with respect to employment during the calendar year 1972 and thereafter.

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pursuant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107 (c).

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd.

Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973.

Amendments

The 1969 amendment made numerous changes in phraseology; rewrote subdivision (b) (1) which formerly provided for employer contributions of 1.8% for 1937 employment and 2.7% for subsequent employment; in subsection (c), deleted an apparently superfluous third paragraph which is shown in brackets in the parent volume; raised the rates stated in the fourth paragraph, now the third paragraph, from 1.5% to 1.6%; in subdivision (c) (1), substituted 3.1% rate for 2.7% rate, "date" for "rate" and "maximum tax rate set by law for each of such years" for "rate of two and seven-tenths (2.7) per centum"; in subdivision (c) (2), substituted 1969 rates for separate rates for 1947 and thereafter and 1953 and thereafter; in subdivision (c) (4), substituted 3.1% rate for 2.7% rate; in subdivision (c) (5), substituted reference to 1.6% and 3.1% rate for references to 1.5% and 2.7% rate; and inserted subdivision (c) (9).

The 1971 amendment added the second paragraph to subdivision (b) (1); added subdivisions (2), (3) and (4) to subsection (b); substituted "total payrolls" for "taxable payrolls" in clause (1) in the second paragraph of subsection (c), and also in two places in subdivision (c) (8); substituted "first calendar quarter of calendar year 1972" for "second calendar quarter of calendar year 1969" in the third paragraph of subsection (c); inserted "(except those employers making payments in lieu of contributions)" in the third paragraph of subsection (c); reduced the rate specified at the end of the third paragraph of subsection (c) from 1.6% to 1.5%; reduced the time required by subdivision (c) (1) from five to three years; added "and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the commission and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year" to the end of the first sentence of subdivision (c) (1); added the second sentence to subdivision (c) (1); added the second sentence to subdivision (c) (3); deleted "No employer's rate shall be fixed below three and one-tenth (3.1) per centum whose benefit payments charged as most recent employer have, in the last three (3) years preceding the computation date, exceeded the amount of his contributions for those years" from the beginning of subdivision (c) (4); inserted "An employer whose benefit payments (charged as most recent employer) in the last three (3) years preceding the computation date exceeded the amount of his contributions for those years" at the beginning of subdivision (c) (4); deleted from the end of subdivision (c) (4) a clause reading "otherwise his rate for the ensuing calendar year shall be fixed at three and one-tenth (3.1) per centum"; reduced the average return rate specified in two places in subdivision (c) (5) from 1.6% to 1.5%; deleted from the end of subdivision (c) (7) a sentence reading "The provisions of section 87-107 applicable to appeals under claims procedure shall apply with like purpose and effect, and be applicable to hearings and request for redeterminations of classifications and rates of contribution filed by employers hereunder"; inserted subdivisions (A) and (B) in subdivision (c) (9); designated the latter part of former subdivision (c) (9) as subdivision (c) (9) (C); deleted "Wages in excess of three thousand dollars ($3,000.00)" at the beginning of subsection (d); added "preceding the year 1972" at the end of the first paragraph of subsection (d); added the second paragraph of subsection (d) and all of subsection (e); and made minor changes in phraseology and punctuation.

The 1973 amendment substituted "division" for "commission" throughout the section; substituted "501(c)(3) of the federal internal revenue code" for "87-148(j)(7)" and inserted "and which are exempt from tax under § 501(a) of such code" in the second paragraph of subdivision (b)(1); added the third paragraph to subdivision (b)(1); substituted "subsection (b)(1) of this section" for "section 87-148(j)(7)" at the beginning of subdivision (b)(3); deleted "for a period of not less than one year" from subdivision (b)(3); substituted the second sentence and paragraphs (A), (B) and (C) of subdivision (b)(3) for two sentences making the election nonterminable by the organization until after the next year but permitting the commission to terminate the election for delinquencies in payment; substituted the first two sentences in subsection (e) for a sentence providing for review of determinations by the commission or a deputy; and made minor changes in style and phraseology.

Separability Clause

Section 5 of Ch. 4, Ex. Laws 1969 read "If any clause, sentence, section, paragraph or part of this act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or inoperative, such judgment shall not affect, im-

pair, or invalidate the remainder of this act but shall be confined in its operation to the clause, sentence, section, paragraph or part directly adjudged to be invalid or inoperative."

Repealing Clause

Section 6 of Ch. 4, Ex. Laws 1969 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 7 of Ch. 4, Ex. Laws 1969 read "Sections 1, 2 and 3 of this act shall be in full force and effect on and after April 6, 1969, and sections 1, 2 and 3 shall apply to all benefit years beginning on and after April 6, 1969, and the insured status of all claimants who have a benefit year current on or after April 6, 1969, shall be redetermined and benefits shall be paid in accordance with this provision, provided that no insured worker shall have his benefits reduced or denied by redetermination resulting from the application of this provision; section 4 of this act shall be in full force and effect on and after April 1, 1969."

87-110. Period, election and termination of employer's coverage. (a) Any employing unit which is or becomes an employer subject to this act within any calendar year, shall be subject to this act during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in subsections (c) and (d) of this section.

(b) Except as otherwise provided in subsection (c) and (d) of this section an employing unit shall cease to be an employer subject to this act only as of the first day of January, of any calendar year, only if it files with the division prior to the last day of February, of such year, a written application for termination of coverage, and the division finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed five hundred dollars ($500). For the purpose of this subsection, the two (2) or more employing units mentioned in paragraph (2) or (3) of section 87-148 (i) shall be treated as a single employing unit.

(c) An employing unit not otherwise subject to this act, or any employing unit for which services are performed that do not constitute employment as defined in this act, may file with the division, a written election that all such services performed by individuals in its employ in one (1) or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this act for not less than two (2) calendar years. Upon the written approval of such election by the division, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1, of any calendar year subsequent to such two (2) calendar years only if at least thirty (30) days prior to such first day of January such employing unit has filed with the division a written notice to that effect.

(d) Any political subdivision of this state may elect to cover under this act service performed by employees in all the hospitals and institutions of higher education as defined in section 87-148 (n) and (o), operated by such political subdivision. The election may exclude any services described in section 87-148 (j)(7)(A). Election is to be made by filing with the division a written notice of such election. The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed. Any

political subdivision electing coverage under this subsection shall make payments in lieu of contributions with respect to benefits attributable to such employment as provided in section 87-109 (b)(4). An election under this section may be terminated, by filing with the division written notice not later than thirty (30) days preceding the last day of the calendar year in which the termination is to be effective. Such termination becomes effective as of the first day of the next ensuing calendar year with respect to services performed after that date.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973.

Amendments

The 1969 amendment deleted "there were no twenty (20) different days, each day being in a different week within the preceding calendar year within which such employing unit employed one (1) or more individuals in an employment subject to this act, or" before "the total wages payable" in the first sentence of subsection (b).

The 1971 amendment deleted the former first paragraph of subsection (c), for text of which see parent volume; inserted "An employing unit not otherwise subject to this act, or" at the beginning of the former second paragraph, now the only paragraph, of subsection (c); added subsection (d); and made minor changes in phraseology.

The 1973 amendment added the clause excepting elective coverage under subsections (c) and (d) to the end of subsection (a); inserted "and (d)" near the beginning of subsection (b); substituted "division" for "commission" throughout the section; inserted "written" before "notice" in the third sentence of subsection (d); deleted "at least thirty (30) days prior to the effective date of such election" at the end of the third sentence in subsection (d); inserted the fourth sentence of subsection (d); deleted the last sentence of subsection (d), which stated the effective date of the section; and made a minor change in style.

87-111. **Unemployment compensation account—establishment and control.** There is hereby established separate and apart from all public moneys or funds of this state, an account in the agency fund known as the unemployment compensation account, which shall be administered by the commission exclusively for the purposes of this act. Any reference to the unemployment compensation fund in this code shall be taken to mean the unemployment compensation account in the agency fund. This account shall consist of (1) all contributions collected under this act, inclusive of voluntary contributions as provided in section 87-109 (c)(4), and payments made in lieu of contributions as provided in section 87-109 (b)(2) and (4); (2) interest earned upon any moneys in the account; (3) any property or securities acquired through the use of moneys belonging to the account; (4) all earnings of such property or securities; and (5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended. All moneys in the account shall be mingled and undivided.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971.

Amendments

The 1971 amendments inserted "and payments made in lieu of contributions as provided in section 87-109 (b) (2) and (4)" at the end of clause (1) in the third sentence.

87-117. **Employment security commission — organization.** There is hereby created a commission to be known as the employment security commission of Montana. The commission shall consist of three (3) mem-

bers who shall be appointed by the governor by and with the advice and consent of the senate. Two (2) of the members of the commission shall be from different political parties and shall serve for terms of four (4) years, provided, however, that one (1) of those first appointed after this act takes effect shall serve for a term of two (2) years. They shall serve on a per diem basis and shall be paid at the rate of twenty dollars ($20) per day of service plus actual and necessary expenses, provided, however, that the total per diem compensation in any one (1) year for each of said two (2) members shall not exceed the sum of one thousand dollars ($1,000). The third member of the commission, who shall be designated as a chairman at the time of his appointment, shall be paid a full-time salary in an amount to be fixed by the governor and shall be the executive director. During his term of membership on the commission, no member shall serve as an officer or committee member of any political party organization. The governor may, at any time, after notice and hearing, remove any commissioner for neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

History: En. Subd. (a), Sec. 10, Ch. 137, L. 1937; amd. Sec. 1, Ch. 102, L. 1953; amd. Sec. 1, Ch. 132, L. 1969; amd. Sec. 1, Ch. 65, L. 1971.

Amendments

The 1969 amendment substituted "employment security commission" for "unemployment compensation commission" in the first sentence.

The 1971 amendment increased the per diem specified by the fourth sentence from $10 to $20 per day, and increased the maximum annual per diem from $500 to $1000.

Cross-References

Commission abolished and functions transferred, sec. 82A-1007.

87-118. Divisions. The commission shall establish two co-ordinate divisions: The Montana state employment service division created pursuant to section 87-132, and the unemployment insurance division. Each division shall be responsible to the executive director for the discharge of its distinctive function. Each division shall be a separate administrative unit with respect to personnel, budget, and duties except in so far as the commission may find that such separation is impracticable.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969.

Amendments

The 1969 amendment substituted "unemployment insurance division" for "unemployment compensation division" in the first sentence.

Cross-References

Bureaus within division of employment security, sec. 82A-1006 (2).

87-120. Administration—duties and powers of commission. It shall be the duty of the commission to administer this act; and it shall have power and authority to adopt, amend, or rescind such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this act, which the commission shall prescribe. The commission shall determine its own organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal

which shall be judicially noticed. The commission shall report as provided in section 2 [82-4002] of this act. Such report shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commission in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reporting requirements of section 82-4002 in the fourth sentence for former provision requiring annual reports.

Cross-References

Quasi-judicial functions of commission transferred to board of labor appeals, sec. 82A-1009.

87-129. Reciprocal benefit arrangements. The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government, whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this act, or under similar provisions of the unemployment compensation laws of such other states, shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests, and will not result in any substantial loss to the fund.

The commission shall participate in any arrangements, approved by the U. S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for benefit purposes;

Provided that in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment compensation laws that the base period of a single state law will be used; and

Provided that such combining of wages will not involve the duplicate use of such wage credits; and

Provided that such other state agency or agency of the federal government has agreed to reimburse the unemployment compensation fund for such portion of benefits paid under this act upon the basis of such

wages or services as the commission finds will be fair and reasonable as to all affected interests; and whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws, with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this act. The commission is hereby authorized to make to other state or federal agencies, reimbursements from or to the unemployment compensation fund, in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971.

Amendments

The 1971 amendment substituted "shall participate in any arrangements, approved by the U. S. secretary of labor" for "is also authorized to enter into arrangements" at the beginning of the second paragraph; inserted the first and second provisos; deleted "and receive from such other state or federal agencies" before "reimbursements" in the final sentence of the section; and made minor changes in phraseology and style.

87-132. State employment service.

Cross-References

Bureau of Montana state employment service within division of employment security, sec. 82A-1006 (2).

87-136. Collection—reciprocity with other states in effecting collection of unpaid unemployment compensation taxes. (a) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the workmen's compensation law of this state. Action for the collection of contributions due shall be brought within five (5) years after the due date of such contributions, otherwise to be barred as provided in section 93-2604.

(b) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The commission is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the chairman of the commission of this state may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great

seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection (a) and added subsection (b).

87-142. Limitation of fees.

Attorney's Fees

Attorney who failed to notify unemployment compensation commission that he represented three clients on a contingent fee basis, which the court determined could be considered a debt for "necessaries" under section 87-143, and not having requested notification from the commission so that he could collect his fee from the three men, was unable to proceed against either the commission or the state. McAlear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-143. No assignment of benefits—exemptions.

Attorney's Fees

Where services rendered by attorney restored three men to the rolls of the unemployment compensation commission, set aside a one-year purge of their names from those rolls, and cleared their names of fraud, court concluded that under such facts attorney's fees should be considered a debt incurred for "necessaries." Mc Alear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

87-145. Penalties — falsity or willful nondisclosure — violations by employer or agent—violation of act or regulations—wrongfully collecting benefits. (a) Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, or under an employment security law of any other state, or territory or the federal government either for himself or for any other person, shall:

(1). * * * [Same as parent volume.]

(2) Be disqualified for benefits thereafter until:

(A) He has repaid to the commission a sum equal to the amount so received by him; provided, however, will not be required to repay any amount so obtained more than five (5) years prior to the date of the commission's determination that the claimant made such false statements, willful nondisclosure or misrepresentation, as provided in this paragraph, and

(B) A period of not less than ten (10) nor more than fifty-two (52) weeks have elapsed since the date of such determination by the commission, the length of time of the disqualification as herein described to be determined by the commission in accordance with the severity of each case.

(b) to (d). * * * [Same as parent volume.]

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969.

Amendments

The 1969 amendment in item (a) (2) (A), deleted "he" before "will not be required," and in item (a) (2) (B), substituted "A period of not less than ten (10) nor more than fifty-two (52) weeks" for "Twelve (12) months" at the beginning, and added "the length of the time * * * the severity of each case."

87-148. Definitions. As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b). * * * [Same as parent volume.]

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e). * * * [Same as parent volume.]

(f) "Division" means the employment security division of the department of labor and industry provided for in Title 82A, chapter 10, R. C. M. 1947.

(g). * * * [Same as parent volume.]

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing services for it within this state; and all individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500);

(2) and (3). * * * [Same as parent volume.]

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or an employing unit, which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2). * * * [Same as parent volume.]

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4). * * * [Same as parent volume.]

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the division that:

(A) to (C). * * * [Same as parent volume.]

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. Effective after December 31, 1974, the term "employment" shall include service performed by all individuals in the employ of this state or of any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities).

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraph (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a hospital in a state prison or other state correctional institution by an inmate of the prison or correctional institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or the Virgin Islands), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (4) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (⅔) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; the term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority;

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one (21) in the employ of his father or mother;

(E) Service performed in the employ of this state, except as provided in subsection (j) (6) of this section, or of any political subdivision thereof, which has not elected coverage pursuant to section 87-110(d);

(F) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks;

(G) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(H) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(I) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(J) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(K) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally

has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(L) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the division may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

(p) "Board" means the board of labor appeals, provided for in Title 82A, chapter 10.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 159 and once by Ch. 404. Ch. 404, the later enactment, incorporated all the changes made by the earlier chapter and made additional changes. The compiler has therefore used the text of Ch. 404 above.

Amendments

The 1965 amendment inserted "securities" in subdivision (j) (6) (J), now subdivision (j) (9) (J).

The 1969 amendment deleted "which for some * * * such day" after "employing unit" in subdivision (i) (1).

The 1971 amendment deleted subdivision (a) (2) defining "average annual payroll"; substituted "employment security" for "unemployment compensation" in subdivision (f); inserted "the state government, any of its political subdivisions or instrumentalities" in the first sentence of subdivision (h); inserted subdivision (i) (4) and the reference to it in subdivision (i) (5); redesignated former subdivisions (i) (4) and (i) (5) as subdivisions (i) (5) and (i) (6); inserted "and (d)" in subdivision (i) (6); inserted "by an individual or by an officer of a corporation" in subdivision (j) (1); inserted subdivisions (j) (6), (7) and (8); redesignated former subdivision (j) (6) as subdivision (j) (9); added "prior to * * * December 31, 1971" to the end of the preliminary paragraph of subdivision (j) (9) (A); deleted "maple syrup or maple sugar or" after "harvesting of" in subdivision (j) (9) (A) (3); deleted "or in connection with the raising or harvesting of mushrooms" after "agricultural commodities" in subdivision (j) (9) (A) (3); inserted "the employ * * * are members) in" in subdivision (j) (9) (A) (4); inserted "in its unmanufactured state" in subdivision (j) (9) (A) (4); substituted "operator produced * * * is performed" for "service is * * * for market" in subdivision (j) (9) (A) (4); revised the former second sentence of subdivision (j) (9) (A) (4) and designated it as subdivision (j) (9) (A) (5); redesignated former subdivision (j) (9) (A) (5) as subdivision (j) (9) (A) (6); deleted former subdivision (j) (9) (E); redesignated former subdivisions (j) (9) (F) and (G) as subdivisions (j) (9) (E) and (F); inserted the present subdivision (j) (9) (G); added subdivisions (j) (9) (K), (L) and (M); deleted "Hawaii" and "Guam" in subdivision (m); added subdivisions (n) and (o); and made minor changes in phraseology and style.

Chapter 159, Laws of 1973, added the provisos to subdivisions (c) and (d); substituted subdivision (f) for a subdivision defining "commission" as the employment security commssion; substituted "division" for "commission" throughout the section; substituted "contributions paid" for "contributions required to be paid" in subdivision (i) (4); deleted "which is excluded from the term 'employment' as defined in the Federal Unemployment Tax Act solely by reason of section 3306 (c) (8) of that Act" from the end of the preliminary paragraph of subdivision (j) (7); substituted the reference to subparagraph (4) in the preliminary paragraph of subdivision (j) (8) for a reference to subparagraph (3); inserted "or operators" near the end of subdivision (j) (9) (A) (4); added "which has not elected coverage pursuant to section 87-110 (d)" at the end of subdivision (j) (9) (E); deleted a subdivision (j) (9) (G) exempting service in the employ of certain community action agencies; redesignated the succeeding subdivisions of subdivision (j) (9); inserted "and payments in lieu of contributions" in subdivision (1); added subdivision (p); and made minor changes in phraseology and punctuation.

Chapter 404, Laws of 1973, made the same changes as did Ch. 159, but with minor differences in style; added the second sentence to subdivision (j) (6); and deleted from the preliminary paragraph of subdivision (j) (7) (A) a reference to paragraph (6) of that subsection.

Effective Date

Section 3 of Ch. 84, Laws 1965 read "This act shall be in full force and effect from and after April 1, 1965."

Independent Contractor

Logging trucker was an independent contractor and not covered by unemployment compensation under subdivision (j) (5) of this section where he provided his own truck, licensed and insured it in his own name, repaired it and paid operational costs himself, hauled logs from paper company's logging operation site to its log pond, was compensated by weight hauled, could take off any days he chose or could work for others, could hire any relief driver he wanted, could refuse any load he did not want, could choose any route of travel he wanted, and was working under a written contract describing him as an independent contractor and requiring him to carry his own industrial insurance, despite the fact that he had to enter the company's premises to load and unload and that the company determined the hours when crews would be available to assist in loading and unloading. St. Regis Paper Co., Forest Products Division v. Unemployment Compensation Commission, 157 M 548, 487 P 2d 524.

87-149. Definitions—continued. (a) Total unemployment:

(1) and (2). * * * [Same as parent volume.]

(3) As used in this subsection the term "wages" shall include only that part of remuneration for work which is in excess of twice the weekly benefit amount, and the term "service" shall include only that work in excess of twelve (12) hours in any one week.

(b) to (f). * * * [Same as parent volume.]

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969.

Amendments

The 1969 amendment, in subdivision (a) (3), substituted "twice the weekly benefit amount" for "fifteen dollars ($15.00) in any one week" in the definition of "wages"; and substituted present definition of "service" for one providing that "'services' shall not include work for which remuneration equal to or less than fifteen dollars ($15.00) per week is payable, or for one (1) day's work not exceeding eight (8) hours, whichever is greater."

TITLE 87A—UNIFORM COMMERCIAL CODE

Chapter 9. Secured transactions—sales of accounts, contract rights and chattel paper, 87A-9-302.1 to 87A-9-302.3, 87A-9-402 to 87A-9-407.

CHAPTER 1—GENERAL PROVISIONS

Part 1—Short Title, Construction, Application and Subject Matter of the Act

87A-1-101. Short title.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Commercial Code: Alabama, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Iowa, Kansas, Minnesota, Mississippi, Nevada, North Carolina, North Dakota, South Carolina, South Dakota, Texas, Utah, Vermont, Washington, and also Virgin Islands.

CHAPTER 2—SALES

Part 3—General Obligation and Construction of Contract

87A-2-314. Implied warranty—merchantability—usage of trade.

DECISIONS UNDER FORMER LAW

Manufacturer's Warranty

Seller who did not manufacture laundromat equipment made no implied warranty of fitness for intended use within former statute providing that one who manufactures an article under order for particular purpose warrants by sale that it is reasonably fit for that purpose, especially in view of seller's disclaimer printed on reverse side of sales agreement. Ryan v. Ald, Inc., 149 M 367, 427 P 2d 53.

Part 7—Remedies

87A-2-719. Contractual modification or limitation of remedy.

Limitation of Damages

Clause in telephone company contract for "yellow pages" advertising, limiting liability for errors and omissions in advertising was a valid and binding limitation rather than a contract fixing damages. State ex rel. Mountain States Telephone & Telegraph Co. v. District Court, — M —, 503 P 2d 526.

CHAPTER 3—COMMERCIAL PAPER

Part 1—Short Title, Form and Interpretation

87A-3-112. Terms and omissions not affecting negotiability.

Cross-Reference

Waiver of statutory exemptions in unsecured note unenforceable, sec. 93-5813.1.

Part 4—Liability of Parties

87A-3-407. Alteration.

DECISIONS UNDER FORMER LAW

Material Alteration

In conviction of grand larceny, in which defendant had stolen and subsequently cashed check, the tearing of the check and its repair did not constitute spoilation under former section 55-907, so as to make the check a nonnegotiable instrument. State v. Romero, 146 M 77, 404 P 2d 500.

CHAPTER 8—INVESTMENT SECURITIES

Part 3—Purchase

87A-8-307. Effect of delivery without endorsement, etc.

DECISIONS UNDER FORMER LAW

Gift of Stock Certificate

Although endorsement may not be absolutely necessary to valid gift of stock certificates, fact that alleged donor had not endorsed certificates as required under former law was evidence that no delivery occurred and hence that there was no valid gift. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

CHAPTER 9—SECURED TRANSACTIONS—SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Part 3. Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

Section 87A-9-302.1. Financing statements of transmitting utilities—definitions.
87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest.
87A-9-302.3. Continued effectiveness of certain laws.

Part 4. Filing

Section 87A-9-402. Formal requisites of financing statement—amendments.
87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer.
87A-9-404. Termination statement.
87A-9-405. Assignment of security interest—duties of filing officer—fees.
87A-9-406. Release of collateral—duties of filing officer—fees.
87A-9-407. Information from filing officer.

Part 2—Validity of Security Agreement and Rights of Parties Thereto

87A-9-203. Enforceability of security interest, etc.

Compiler's Notes

Sections 53-123 to 53-128, contained in the reference to Chapter 1 of Title 53, in subsection (2) of this section in the parent volume, were repealed by Sec. 1, Ch. 101, Laws 1959. Section 53-138 was repealed by Sec. 5, Ch. 256, Laws 1965.

Part 3—Rights of Third Parties—Perfected and Unperfected Security Interests—Rules of Priority

87A-9-302.1. Financing statements of transmitting utilities—definitions. As used in this act,

(a) "Transmitting utility" means: (1) Any corporation or other business entity primarily engaged, pursuant to rights or franchises

issued by and subject to the jurisdiction of a state or federal regulatory body, in the railroad or street railway business, the telephone or telegraph business, the transmission of oil, gas or petroleum products by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, and (2) any other corporation primarily engaged in the production, transmission or distribution of electricity, or the furnishing of telephone service, whether or not such corporation is subject to the jurisdiction of a state or federal regulatory body.

(b) "Uniform Commercial Code" means Chapters 1 through 10 of Title 87A of the Revised Codes of Montana, 1947.

History: En. Sec. 1, Ch. 76, L. 1965; amd. Sec. 1, Ch. 279, L. 1967.

Title of Act

An act relating to the Uniform Commercial Code of Montana by adding a new section to be known and codified as section 87A-9-408, relating to the filing by certain public utilities of certain instruments required to be filed under the provisions of the Uniform Commercial Code; providing for a repealing clause; providing for a severability clause; and providing for an effective date.

Amendments

The 1967 amendment subdivided subsection (a), designating the first sentence as subsection (a)(1) and adding subsection (a)(2), and made minor changes in punctuation.

87A-9-302.2. Place of filing of utility financing statement—contents—perfection of security interest. Financing statements of a transmitting utility, notwithstanding sections 87A-9-302(3), 87A-9-302(4), 87A-9-401(1), 87A-9-402, 87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406 of the Uniform Commercial Code.

(a) If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state;

(b) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required;

(c) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20 (c) of the Interstate Commerce Act or by filing a financing statement pursuant to the Uniform Commercial Code as provided in subsection (a).

History: En. Sec. 2, Ch. 76, L. 1965; amd. Sec. 2, Ch. 279, L. 1967.

Compiler's Note

Filing provisions of Interstate Commerce Act, see 49 U. S. C., sec. 20c.

Amendments

The 1967 amendment, in the first paragraph, inserted "87A-9-403, 87A-9-404, 87A-9-405 and 87A-9-406" after "87A-9-402"; in subdivision (a), inserted "or other corporation covered hereby" after "transmitting utility."

Repealing Clause

Section 3 of Ch. 279, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 4 of Ch. 279, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

87A-9-302.3. Continued effectiveness of certain laws. Unless displaced by the specific provisions of this act, the Uniform Commercial

Code and other applicable laws remain in full force and effect and supplement the provisions of this act.

History: En. Sec. 3, Ch. 76, L. 1965.

Repealing Clause

Section 4 of Ch. 76, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 5 of Ch. 76, Laws 1965 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 6 of Ch. 76, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved February 26, 1965.

87A-9-306. "Proceeds"—secured party's rights, etc.

Application of Proceeds

Where debtor's liquor license had been purchased with advances from bank under security agreement, proceeds from sale of such license were to be applied first to notes secured by such security agreement, then to note secured by an attachment, and finally to other obligations, since sale contract provided that all proceeds were to be placed in escrow with bank to whom all debts were owed. Gallatin Trust & Savings Bank v. Darrah, 153 M 228, 456 P 2d 288.

Res Judicata

Bankruptcy court's rulings that bankrupt did not exchange collateral within twelve months of petition in bankruptcy and that bankrupt did not hold legal title to property received in exchange did not preclude holder of security interest in the collateral from attempting to trace the collateral, and the holder was not liable for malicious prosecution even though it was later held that the security interest was unperfected because filed in the wrong office. 3-D Lumber Co. v. Belgrade State Bank, 157 M 481, 487 P 2d 1136.

Unperfected Security Interest

Subsection (2) did not apply and holder of security interest was not allowed to trace the proceeds of collateral exchanged, where the security interest had not been perfected because it had been filed in the wrong office. Belgrade State Bank v. Elder, 157 M 1, 482 P 2d 135.

87A-9-312. Priorities among conflicting security interests, etc.

DECISIONS UNDER FORMER LAW

Ranking of Priorities

Under statute making liquor license transferable personal property capable of being mortgaged to secure existing debt and other statute providing that mortgage first given, acknowledged and recorded was entitled to priority, owner of note secured by properly recorded mortgage on liquor license was entitled to foreclose mortgage notwithstanding claim of lessor based on covenant in lease whereby lessee agreed not to move liquor license from property. Gaskill v. Severovic, 149 M 340, 426 P 2d 582.

Part 4—Filing

87A-9-401. Place of filing—erroneous filing—removal of collateral.

Forestry and Logging

Forestry and logging are not farming for the purposes of subdivision (1)(a) of this section; filing with the secretary of state is necessary to perfect a security interest on equipment used for that purpose. Belgrade State Bank v. Elder, 157 M 1, 482 P 2d 135.

87A-9-402. Formal requisites of financing statement—amendments. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a

mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. Except for financing statements filed pursuant to section 87A-9-302.2, R.C.M. 1947 when the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned and the name of the record owner or record lessee thereof. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2). * * * [Same as parent volume.]

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) _____

Address _____

Name of secured party (or assignee) _____

Address _____

Name of record owner or record lessee _____

Address _____

1. to 4. * * * [Same as parent volume.]

(4) and (5). * * * [Same as parent volume.]

History: En. Sec. 9-402, Ch. 264, L. 1963; amd. Sec. 1, Ch. 272, L. 1967.

Amendments

The 1967 amendment, in subsection (1), inserted "Except for financing statements filed pursuant to section 87A-9-302.2, R. C. M. 1947" at the beginning of the third sentence and added "and the name of the record owner or record lessee thereof" after "real estate concerned"; and, in subsection (3), inserted after the name and address of the secured party "Name of record owner or record lessee" and "Address."

87A-9-403. What constitutes filing—duration of filing—effect of lapsed filing—duties of filing officer. (1). * * * [Same as parent volume.]

(2) A filed financing statement which states a maturity date of the obligation secured of five (5) years or less is effective until such maturity date and thereafter for a period of sixty (60) days. Any other filed financing statement is effective for a period of five (5) years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty-day period after a stated maturity date or on the expiration of such five-year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five (5) years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six (6) months before [and] sixty (60) days after a stated maturity date of five (5) years or less, and (ii) otherwise within six (6) months prior to the expiration of the five-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original

statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five (5) years after the last date to which the filing was effective whereupon its lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4). * * * [Same as parent volume.]

(5) Except financing statements filed pursuant to section 87A-9-302.2, R.C.M., 1947, if the instrument covers crops growing or to be grown or goods which are, or are to become fixtures, or timber, said instrument shall be indexed in accordance with the requirements applicable to the recording of mortgages of real estate under the laws of this state. For the purpose of such indexing, each of the debtor (or assignor) and the record owner or record lessee of any real estate described in the financing statement shall be considered a mortgagor with respect to the financing statement and the secured party (or assignee) shall be considered a mortgagee with respect to the financing statement.

(6) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for an original or a continuation statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement shall be two dollars ($2).

History: En. Sec. 9-403, Ch. 264, L. 1963; amd. Sec. 2, Ch. 272, L. 1967; amd. Sec. 4, Ch. 185, L. 1971.

Amendments

The 1967 amendment added a new subsection (5); redesignated old subsection (5) as new subsection (6); and substituted "data" for "date" after "furnishing filing" in the second sentence.

The 1971 amendment increased the fee specified at the end of subsection (6) from one dollar to two dollars; deleted from the end of subsection (6) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such original or continuation statement"; and made minor changes in style.

87A-9-404. Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number, and by document number, as the case may be. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be two dollars ($2). If the affected secured party fails to send such a termination statement within ten days after proper demand therefor

he shall be liable to the debtor for one hundred dollars ($100), and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the termination statement must be indexed in accordance with the requirements applicable to releases of real estate mortgages.

(3) If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and indexing a termination statement including sending or delivering the financing statement shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be two dollars ($2).

History: En. Sec. 9-404, Ch. 264, L. 1963; amd. Sec. 3, Ch. 272, L. 1967; amd. Sec. 5, Ch. 185, L. 1971.

Amendments

The 1967 amendment, added "and by document number, as the case may be" after "by file number" in the first sentence of subsection (1); and, inserted the third sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of the third sentence of subsection (1) and at the end of the second sentence of subsection (3) from one dollar to two dollars; deleted from the end of the third sentence of subsection (1) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such assignment or statement"; deleted from the end of subsection (3) a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such termination statement"; and made minor changes in style.

87A-9-405. Assignment of security interest—duties of filing officer—fees. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section 87A-9-403 (4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be two dollars ($2).

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address

of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock, of railroads or street railways, the fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be two dollars ($2).

(3). * * * [Same as parent volume.]

History: En. Sec. 9-405, Ch. 264, L. 1963; amd. Sec. 4, Ch. 272, L. 1967; amd. Sec. 6, Ch. 185, L. 1971.

Amendments

The 1967 amendment substituted "data" for "date" in the fifth sentence of subsection (1); and inserted the fifth sentence in subsection (2).

The 1971 amendment increased the fees specified at the end of subsection (1) and at the end of subsection (2) from one dollar to two dollars; and deleted from the end of each of such subsections a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00) for each page or fraction thereof of such statement."

87A-9-406. Release of collateral—duties of filing officer—fees. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be fifteen dollars ($15.00). In all other cases the uniform fee for filing and noting such a statement of release shall be two dollars ($2).

History: En. Sec. 9-406, Ch. 264, L. 1963; amd. Sec. 5, Ch. 272, L. 1967; amd. Sec. 7, Ch. 185, L. 1971.

Amendments

The 1967 amendment inserted the fourth sentence.

The 1971 amendment increased the fee specified at the end of the section from one dollar to two dollars; deleted from the end of the section a clause reading "except that where recording is done by photographic or other similar process the uniform fee shall be two dollars ($2.00)

for each page or fraction thereof of such statement"; and made a minor change in phraseology.

Repealing Clause

Section 6 of Ch. 272, Laws 1967 repealed all acts and parts of acts in conflict therewith.

87A-9-407. Information from filing officer. (1). * * * [Same as parent volume.]

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the name and addresses of each secured party therein. The uniform fee for such a certificate shall be three dollars ($3). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents (50¢) per page.

History: En. Sec. 9-407, Ch. 264, L. 1963; amd. Sec. 8, Ch. 185, L. 1971.

Amendments

The 1971 amendment substituted "three dollars ($3.00)" at the end of the second sentence of subsection (2) for "one dollar ($1.00) plus thirty cents (30¢) for each financing statement and for each statement of assignment reported therein"; and made a minor change in phraseology.

Part 5—Default

87A-9-505. Compulsory disposition of collateral, etc.

DECISIONS UNDER FORMER LAW

Conditional Sales Contract

Upon default of conditional sales contract, seller could treat contract as existing but broken by buyer and maintain action for damages for breach under former statute. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

TITLE 89—WATERS AND IRRIGATION

Chapter 1. Division of water resources, 89-101.1 to 89-103.8, 89-105, 89-115, 89-118, 89-132.1.
3. Weather modification activities, 89-310 to 89-331.
7. Dams and reservoirs—construction and examination of, 89-702, 89-702.1.
8. Water rights—appropriation and adjudication, 89-865 to 89-8-102.
9. Yellowstone River Compact—ratification of, 89-907 to 89-909, 89-912, 89-914.
10. Water commissioners—determination of joint rights, 89-1001.
12. Irrigation districts—organization, 89-1201, 89-1208.
13. Irrigation districts—board of commissioners, powers, duties and elections, 89-1301.
17. Irrigation districts—bonds, 89-1701, 89-1705, 89-1706, 89-1708.
18. Irrigation districts—taxes and assessments, 89-1801, 89-1804, 89-1811, 89-1812.
21. Irrigation districts—appeals—miscellaneous provisions, 89-2107.
23. Drainage districts—commissioners—election—organization—reports, 89-2330 to 89-2330.2, 89-2332 to 89-2334, 89-2337, 89-2338, 89-2348.
24. Drainage districts—taxes and assessments, 89-2401, 89-2405, 89-2410.
25. Drainage districts—bonds—refunding indebtedness, 89-2501, 89-2502.
29. Appropriation and regulation of ground water, 89-2911, 89-2915, 89-2917, 89-2918, 89-2928.1, 89-2934.1.
33. County and municipal participation in flood control and water conservation, 89-3301 to 89-3309, 89-3309.1, 89-3310 to 89-3314.
34. Conservancy districts, 89-3401 to 89-3449.
35. Floodway management and regulation, 89-3501 to 89-3515.

CHAPTER 1—DIVISION OF WATER RESOURCES

Section 89-101.1. Short title.
89-101.2. State necessity and policy.
89-102. Definitions.
89-103. Montana water resources board—officers—meetings—quorum—employees—counsel—compensation.
89-103.1. Director of Montana water resources board—appointment—qualifications.
89-103.2. Powers and duties of director.
89-103.3. Salaries of director and employees of board.
89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board.
89-103.5. Records and property transferred to Montana water resources board.
89-103.6. Funds and appropriations transferred to Montana water resources board.
89-103.7. Yellowstone compact obligations unimpaired.
89-103.8. State obligations unimpaired.
89-105. Power of board to construct works and to act beyond jurisdiction.
89-115. Water funds—rates—sale of water—lease and sale of water rights and property.
89-118. Powers and duties of board—actions at law.
89-132.1. Additional powers and duties of the board.

89-101. (349.1) Repealed.

Repeal

This section (Sec. 1, Ch. 35, Ex. L. 1933), relating to the state purpose of water conservation, was repealed by Sec. 7, Ch. 158, Laws 1967.

89-101.1. Short title. This act shall be known and may be cited as the "Montana Water Resources Act of 1967."

History: En. Sec. 1, Ch. 158, L. 1967.

Title of Act

An act providing for the Montana Water Resources Act of 1967; providing an expanded statement of state necessity and policy relating to water resources; amending section 89-103, R. C. M. 1947, providing that name of the state water conservation board shall be changed to Montana water resources board; providing additional powers for the Montana water resources board; providing for a comprehensive inventory of water resources; providing for a state water plan; amending section 89-102, R. C. M. 1947, providing additional definitions; amending section 89-813, R. C. M. 1947, providing that county clerks and recorders shall furnish the Montana water resources board with copies of water appropriations and transfers of water appropriations; and repealing section 89-101, R. C. M. 1947.

89-101.2. **State necessity and policy.** It is hereby declared that:

(1) The general welfare of the people of Montana, in view of the state's population growth and expanding economy, requires that water resources of the state be put to optimum beneficial use and not wasted.

(2) The public policy of the state is to promote the conservation, development and beneficial use of the state's water resources to secure maximum economic and social prosperity for its citizens.

(3) The state, in the exercise of its sovereign power, acting through the water resources board, hereinafter created, shall co-ordinate development and use of the water resources of the state so as to effect full utilization, conservation and protection of its water resources.

(4) The development and utilization of water resources, and the efficient, economic distribution thereof, are vital to the people in order to protect existing uses and to assure adequate future supplies for domestic, industrial, agricultural and other beneficial uses.

(5) The water resources of the state must be protected and conserved to assure adequate supplies for public recreational purposes and for the conservation of wildlife and aquatic life.

(6) The public interest requires the construction, operation and maintenance of a system of works for the conservation, development, storage, distribution and utilization of water, which said construction, operation and maintenance is a single object and is in all respects for the welfare and benefit of the people of the state.

(7) It is necessary to co-ordinate local, state and federal water resource development and utilization plans and projects through a single agency of state government, hereinafter created and to be known as the "Montana water resources board."

(8) The greatest economic benefit to the people of Montana can be secured only by the sound co-ordination of development and utilization of water resources with the development and utilization of all other resources of the state.

(9) To achieve these objectives, and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, co-ordinated multiple-use water resource plan be progressively formulated, to be known as the "state water plan."

History: En. Sec. 2, Ch. 158, L. 1967.

89-102. (349.2) **Definitions.** As used in this act, the following words and terms shall have the following meanings:

(a) the word "board" shall mean the Montana water resources board hereinafter created.

(b) The word "works" shall be deemed to include all property, rights, easements and franchises relating thereto and deemed necessary or convenient for their operation, and all water rights acquired or exercised by the board in connection with such works, and shall embrace all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines and waterworks systems and shall include all such works for the conservation, development, storage, distribution and utilization of water including, without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial or other uses and for fire protection.

(c) The term "cost of works" shall embrace the cost of construction, the cost of all lands, property, rights, easements and franchises acquired, which are deemed necessary for such construction, the cost of all water rights acquired or exercised by the board in connection with such works, the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding three (3) years after the completion of construction, cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and the construction of the works and the placing of the same in operation; provided, however, the board in determining the cost of works may make nonreimbursable allowances for costs of public benefits, including but not limited to, irrigation, recreation, flood prevention, fish and wildlife, and stream stabilization.

(d) The word "owner" shall include all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies or associations having any title or interest in any properties, rights, easements or franchises to be acquired.

(e) and (f). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 95, L. 1935; amd. Sec. 1, Ch. 163, L. 1965; amd. Sec. 3, Ch. 158, L. 1967.

Amendments

The 1965 amendment inserted "waste canals, drainage canals, dikes" in paragraph (b); inserted "flood prevention, drainage, fish and wildlife, recreation" near the end of paragraph (b); substituted "industrial or other uses and for fire protection" at the end of paragraph (b) for "industrial and other uses for fire protection"; added the proviso at the end of paragraph (c); and inserted "drainage districts, flood control districts" in paragraph (d).

The 1967 amendment, in subdivision (a), substituted "Montana water resources" for "state water conservation."

89-103. (349.3) Montana water resources board—officers—meetings—quorum—employees—counsel—compensation. (1) There is hereby created a board to be known as the "Montana water resources board," and by

that name the board may sue and be sued, plead and be impleaded, and contract and be contracted with. Wherever in this code the words, "state water conservation board" shall be used they shall mean the "Montana water resources board." The board shall consist of seven (7) members, including the governor and director who shall be members ex officio. The five (5) remaining members shall be qualified electors of the state and shall be appointed by the governor with the consent of the senate, and shall serve for a term of six (6) years, except that immediately after the effective date of this act the governor shall appoint two (2) members of the board whose term of office shall expire on the second Monday in January, 1967, another two (2) members of the board whose term of office shall expire on the second Monday in January, 1969, and one (1) member of the board whose term of office shall expire on the second Monday in January, 1971, and their successors shall be appointed for a term of six (6) years, except that any person appointed to fill a vacancy shall be eligible for reappointment. Any of the appointed members of the board may be removed by the governor at any time, and any vacancy caused by the death, removal, or resignation or disqualification of any appointed member shall be filled by appointment as hereinabove provided. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the second (2) Monday in January during the biennial session of the legislative assembly preceding the commencement of the term for which the appointment is made. Before entering upon the discharge of his duties, each appointed member shall take, subscribe and file with the secretary of state the oath prescribed by the constitution.

(2) The governor shall be the chairman of the board and the vice-chairman shall be the secretary and treasurer of the board. The board shall maintain its principal office in the city of Helena and may maintain such branch offices as it may determine. It shall elect a vice-chairman at its first meeting who shall preside at all meetings of the board when the chairman thereof is absent. It may provide for the holding of regular meetings and may hold a special meeting for the transaction of any business which may properly come before the board at any time and at any place in the state upon the call of the chairman or the vice-chairman or any two (2) members, notice of which may be given by telegram or by depositing in the mails at least forty-eight (48) hours before the meeting; but no notice shall be necessary if at least four (4) members of the board shall be present. A majority in number of the members shall constitute a quorum and the affirmative or negative vote of four (4) members shall be necessary to bind the board.

(3) The board shall have and adopt a seal bearing its name, which seal shall be affixed to such records and other instruments as it may direct, and all courts shall take judicial notice of said seal. It is authorized to adopt from time to time, as necessary or expedient, suitable rules and regulations for the administration of this act. The attorney general shall act as legal adviser for the board and shall perform such legal services as the board may request; he shall receive his actual and necessary expenses when engaged in travel in the performance of such

services. With his consent the board may employ additional legal counsel, and the board may also appoint such technical and other assistants and employees as may be necessary to enable it to perform its duties and carry out the purposes of this act, and may fix their compensation.

(4) Each appointed member of the board shall receive, as compensation for his services, the sum of twenty dollars ($20) per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the place at which he performs such duties, together with actual traveling and maintenance expenses while away from his home in the performance of the duties of his office. All such compensation and expenses shall be paid solely from the funds provided under the authority of this act.

History: En. Sec. 3, Ch. 35, Ex. L. 1933; amd. Sec. 50, Ch. 177, L. 1965; amd. Sec. 1, Ch. 278, L. 1965; amd. Sec. 4, Ch. 158, L. 1967.

Amendments

Chapter 177, Laws 1965, deleted "and secure such fidelity bonds as it may deem advisable" from the end of subsection (3).

Chapter 278, Laws 1965, increased the size of the board from five to seven and the number of appointive members from three to five; substituted the director for the state engineer as an ex officio member in the former second sentence of subsection (1); inserted "with the consent of the senate" after "appointed by the governor" in the former third sentence of subsection (1); substituted the portion of the former third sentence of subsection (1) relating to appointment and terms of the first appointive members for provisions relating to appointive members whose terms expired in 1935, 1937, and 1939; changed the number of votes required to bind the board, as specified in the final sentence of subsection (2) from three to four; increased the per diem rate of appointive members, as specified near the beginning of subsection (4), from $10 to $25; deleted from the end of subsection (4) a sentence reading, "The state engineer shall exercise such powers and perform such duties, in addition to his regular duties as state engineer and as the board shall prescribe, and may receive and be paid such additional salary for such additional duties as may be fixed by the board"; and made minor changes in phraseology and punctuation.

The 1967 amendment, in the first sentence of subsection (1), substituted "Montana water resources board" for "state water conservation board"; inserted the present second sentence in subsection (1); and, in subsection (4), decreased per diem of board members from $25 to $20.

Repealing Clause

Section 51 of Ch. 177, Laws 1965 read "Sections 3-407, 6-101, 6-102, 6-103, 6-104, 46-702, 66-810, 77-1004, 79-809, 82-404, 82-507, 82-1013, 82-1907, 82-2213, 92-106 and 92-107, R. C. M. 1947, are repealed."

Cross-References

Board abolished and functions transferred, sec. 82A-1505(1).

Bonds of state officers and employees, sec. 6-105 et seq.

89-103.1. Director of Montana water resources board—appointment—qualifications. There is hereby created the office of director of the state water conservation board who shall hereinafter be referred to as the "director." The director shall be appointed by the governor and shall serve at the pleasure of the governor, or until his successor shall be appointed and shall have qualified. No person shall be appointed director who has not such theoretical and such practical experience and skill as to qualify him to carry out the duties enjoined on him.

History: En. Sec. 1, Ch. 279, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

Title of Act

An act creating the office of director of the state water conservation board; providing for the appointment of the director of the state water conservation board by the governor; providing for the term of office, duties of the director of the state

water conservation board and limitations on such duties; and providing that nothing herein contained shall impair the lawful obligations of the state water conservation board.

89-103.2. Powers and duties of director. The director shall be the chief administrative office [officer] of the state water conservation board and shall perform and execute in the name of the board all ministerial acts required of the state water conservation board by law and shall perform and execute such other duties as may be required by said board, provided that the director shall not acquire by appropriation or otherwise any water right or interest therein and shall not acquire any real property or interest therein or mortgage or otherwise create a lien on the same or dispose of in any manner any water rights or property without specific authorization from and approval of said board. The director shall not construct or cause to be constructed or contract for the construction of any works or projects without specific authorization from and approval of said board.

History: En. Sec. 2, Ch. 279, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

89-103.3. Salaries of director and employees of board. The salary of the director shall be in such amount as may be specified by the legislative assembly in the appropriation to the state water conservation board. If the legislative assembly does not specify the maximum salary for the director, it shall be fixed by the state water conservation board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states and private industry.

History: En. Sec. 3, Ch. 279, L. 1965; amd. Sec. 14, Ch. 237, L. 1967.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

Amendments

The 1967 amendment completely rewrote this section. Prior to amendment it read, "The salary of the director shall not exceed ten thousand dollars ($10,000). No salary of an employee of the board shall exceed the salary of the director."

Saving Clause

Section 4 of Ch. 279, Laws 1965 read "Nothing in this act contained shall in any way impair any obligation of the state water conservation board lawfully entered into prior to the effective date of this act."

89-103.4. Powers of Carey Land Act board and state engineer transferred to Montana water resources board. Any duties, authority or obligation conferred or imposed by law on the Carey Land Act board or the state engineer which are not in this act otherwise provided for are hereby transferred to and conferred and imposed on the state water conservation board.

History: En. Sec. 17, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

Title of Act

An act repealing sections 81-2006, 81-2008, 81-2010, 81-2012, R. C. M. 1947, thereby abolishing the office of state engineer; amending sections 81-2009, 81-2018, 82-3001, 89-702, 89-847, 89-848, 89-849, 89-851, 89-907, 89-908, 89-909, 89-912, 89-

914, 89-1201, and 89-2911, R. C. M. 147, to provide for the transfer of certain duties of the state engineer to the state water conservation board; abolishing the Carey Land Act board; repealing sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947; providing for the transfer of the book and records and funds of the Carey Land Act board and the office of the state engineer to the state water conservation board; and providing that nothing in this act contained shall impair the obligations of the state of Montana under the Yellowstone River Compact or the obligations of the state of Montana, or the state water conservation board contracted prior to the effective date of this act.

89-103.5. Records and property transferred to Montana water resources board. Immediately following the effective date of this act all books, records, papers, material and supplies of all kinds and nature belonging to the Carey Land Act board, or in the office of the state engineer shall be transferred to the state water conservation board.

History: En. Sec. 18, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

89-103.6. Funds and appropriations transferred to Montana water resources board. On the effective date of this act all funds in the state treasury which were appropriated to or available to the Carey Land Act board or the state engineer shall become available to the state water conservation board to be used for the purpose of carrying out the purposes of this act and the State Water Conservation Act.

History: En. Sec. 19, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

89-103.7. Yellowstone compact obligations unimpaired. Nothing in this act contained shall in any manner impair the obligations of the state of Montana under the Yellowstone River Compact.

History: En. Sec. 20, Ch. 280, L. 1965.

89-103.8. State obligations unimpaired. Nothing in this act contained shall impair any obligations of the state of Montana or the state water conservation board or the Carey Land Act board lawfully entering to [entered into], assumed or contracted for prior to the effective date of this act.

History: En. Sec. 21, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board, later redesignated the Montana water resources board, has been abolished. See sec. 82A-1505(1).

Repealing Clause

Section 22 of Ch. 280, Laws 1965 read "Sections 81-2001, 81-2002, 81-2003, 81-2004, 81-2005, 81-2007, 81-2013, 81-2015, 81-2017, 81-2101 through 81-2121, 81-2123 and 81-2125 through 81-2130, R. C. M. 1947, are repealed."

89-105. (349.5) Power of board to construct works and to act beyond jurisdiction. The board is hereby authorized to construct, whenever it shall deem such construction expedient, any public works as hereinabove defined, the cost of such construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant

to aid in financing such construction from the United States of America or any instrumentality or agency thereof and of other funds provided under the authority of this act. Before constructing any project, the department shall make estimates of the cost of the project, of the cost of maintaining, repairing and operating the same, and of the revenues to be derived therefrom, and no such project shall be constructed unless, according to such estimates, the revenues to be derived therefrom will be sufficient to pay the cost of maintaining, repairing and operating the same, and to pay the principal and interest of revenue bonds which may be issued for the cost of such project; provided, however, that in connection with the issuance of any of such bonds, the failure of the board to make the estimates required by this section or to make same in proper form shall in no way affect the validity or enforceability of any such bonds or of the trust indenture, resolution or other security therefor.

However, should the bid of the lowest responsible bidder on any capital improvement associated with public works as defined in this section exceed the department estimates of the cost of the improvements by more than five per cent (5%), the department shall obtain approval from the works user association before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

The purpose of this act is to meet, so far as possible, a state-wide need for the conservation and use of water, through the construction and operation of projects designed for such purposes. The board is therefore empowered to make such investigations as may be necessary to plan and carry out a comprehensive state-wide program of water conservation. The projects to be finally constructed shall qualify as parts of such state-wide program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance and repair and the amortization of the cost of the construction; provided, however, that the failure of the board to determine such prospective ability of a project shall in no way affect the validity or enforceability of any of such bonds or of the trust indenture, resolution, or other security therefor.

The board may exercise any of its powers:

(a) to (c). * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 35, Ex. L. 1933; amd. Sec. 2, Ch. 95, L. 1935; amd. Sec. 1, Ch. 278, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" near the beginning of the second sentence in the first paragraph; and inserted the second paragraph.

89-115. (349.12) **Water funds—rates—sale of water—lease and sale of water rights and property.** The board of natural resources and conservation is hereby authorized and empowered, subject to the provisions of this act, to fix and establish the prices, rates and charges at which any and all the resources and facilities made available under the provi-

sions of this act shall be sold and disposed of; to enter into any and all contracts and agreements, and to do any and all things which in its judgment are necessary, convenient or expedient for the accomplishment of any and all the purposes and objects of this act, under such general regulations and upon such terms, limitations and conditions as it shall prescribe; and it is and shall be the duty of the board to enter into such contracts and fix and establish such prices, rates and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of any and all of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds as they severally become due and payable; provided, that nothing contained in this act shall authorize any change, alteration or revision of any such rates, prices or charges as established by any contract entered into under authority of this act except as provided by any such contract.

Any incorporated water users' association that is sustaining and responsible for the operations of its works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

Every contract made by the board for the sale of water, use of water, water storage or other service, or for the sale of any property or facilities, shall provide that in the event of any failure or default in the payment of any moneys specified in such contract to be paid to the board, the board may, upon such notice as shall be prescribed in such contract, terminate such contract and all obligations thereunder. The act of the board in ceasing on any such default to furnish or deliver water, use of water, water storage or other service under such contract shall not deprive the board of, or limit any remedy provided by such contract or by law for the recovery of any and all moneys due or which may become due under such contract.

The board is empowered to sell, transfer to user associations, abandon or otherwise dispose of any rights of way, easements or property when it shall determine that the same is no longer needed for the purposes of this act, or to lease or rent the same or to otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the board as to the market value of rights of way, easements or property to be sold, transferred, abandoned or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service, and from the operation, lease, sale or other disposition of the works, property and facilities acquired under the provisions of this act, shall be deposited to the state general fund.

History: En. Sec. 11, Ch. 35, Ex. L. 1933; amd. Sec. 1, Ch. 459, L. 1973.

Amendments

The 1973 amendment inserted "of natural resources and conservation" after "board" at the beginning of the first paragraph; inserted the second paragraph; inserted "transfer to user associations, abandon" near the beginning of the fourth paragraph; inserted the second sentence in the fourth paragraph; and

substituted "deposited to the state general fund" for "paid to the credit of the appropriate water fund" at the end of the fourth paragraph.

89-118. (349.15) **Powers and duties of board—actions at law.** (1). * * * [Same as parent volume.]

(2) The board shall have power to institute in any of the courts of this state, or in any other state, or in any of the federal courts of this state or any other state, any actions, suits, and special proceedings necessary to enable it to acquire, own, and hold title to lands for dam sites, reservoir sites, water rights, rights of way for diversion and distributing canals, and lateral ditches, and other means of distribution of water, and may also in all said courts institute, maintain, and prosecute to final determination any and all actions, suits and special proceedings necessary to have the water rights adjudicated upon any stream or source of water supply from which is derived the water for such reservoir, diversion and distributing canals, lateral ditches and other means of distribution of the water; and said board may join any and all owners of waters heretofore appropriated by any person, association or corporation from any of the streams of the state of Montana, so that adjudication may be had of all surplus water upon all the streams and sources of water supply of any project so constructed by said board. All costs and expenses of such actions, suits or special proceedings shall be paid by said board out of funds provided under the authority of this act.

History: En. Sec. 14, Ch. 35, Ex. L. 1933; amd. Sec. 43, Ch. 177, L. 1965.

Amendment

The 1965 amendment deleted from subsection (2) a second paragraph reading, "The vice-chairman of the board, who shall act as secretary and treasurer, shall furnish a bond in the form and to the amount that shall be required by said board."

Cross-References

Bonds of state officers and employees, sec. 6-105 et seq.

89-121 to 89-123. (349.18 to 349.20) **Repealed.**

Repeal

Sections 89-121 to 89-123 (Secs. 17 to 19, Ch. 35, Ex. L. 1933; Sec. 1, Ch. 214, L. 1963), relating to appropriation of water by the board, were repealed by Sec. 46, Ch. 452, Laws 1973.

89-132. (349.29) **Powers of board to carry out policy of state, etc.**

Cross-Reference

Flood control projects of cities, towns and counties, secs. 89-3301 to 89-3313.

89-132.1. Additional powers and duties of the board. In addition to any other power or duty authorized or imposed by provisions of this code, the board shall be empowered, and a duty is hereby enjoined thereon, to:

(1) Gather from any source reliable information relating to Montana's water resources, and prepare therefrom a continuing comprehensive inventory of the water resources of the state. In preparing said inventory, the board may conduct studies, adopt studies made by other competent water resource groups including federal, regional, state or private agencies, perform research or employ other competent agencies to per-

form research on a contract basis, and hold public hearings in affected areas at which all interested parties shall be given an opportunity to appear.

(2) Formulate and adopt, and from time to time amend, extend or add to, a comprehensive, co-ordinated multiple-use water resources plan, known as the "state water plan." Said state water plan may be formulated and adopted in sections, said sections corresponding with hydrologic divisions of the state. The state water plan shall set out a progressive program for the conservation, development and utilization of the state's water resources, propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combinations of uses. Before adoption of the state water plan, or any section thereof, the board shall hold public hearings in the state, or in an area of the state encompassed by a section thereof if adoption of a section is proposed. Notice of said hearing or hearings shall be published for two (2) consecutive weeks in a newspaper of general county circulation in each county encompassed by the proposed plan or section thereof at least thirty (30) days prior to said hearing.

(3) Submit to each general session of the legislature the state water plan or any section thereof or amendments, additions or revisions thereto which the board shall have formulated and adopted.

(4) Prepare a continuing inventory of the ground-water resources of the state. Said ground-water inventory shall be included in the comprehensive water resources inventory described in subsection (1) above, but shall be a separate component thereof.

(5) Publish the comprehensive inventory, the state water plan, the ground-water inventory, or any part of each, and may assess and collect a reasonable charge for said publications.

(6) Promulgate rules and regulations necessary to effect the purposes of this act.

History: En. Sec. 5, Ch. 158, L. 1967.

CHAPTER 3—WEATHER MODIFICATION ACTIVITIES

Section 89-310. Definitions.
89-311. Montana water resources board responsible for administration—expenses of members.
89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority.
89-312.1. Standards for research in weather modification control.
89-313. License and permit required for weather modification and control.
89-314. Board to review applications—exemptions.
89-315. Issuance of license—qualifications of licensees.
89-316. Term of license—renewal.
89-317. License fee.
89-318. Issuance of permits—requirements for permit—hearing.
89-319. Separate permit for each operation.
89-320. Notice of intention to apply for permit—activities limited by terms of permit.
89-321. Contents of notice of intention.
89-322. Publication of notice of intention.
89-323. Proof of financial responsibility by applicant.

89-324. Permit fee—time of payment.
89-325. Account in agency fund—fees used to pay expenses.
89-326. Records of operations maintained by licensees.
89-327. Reports of operations.
89-328. Records and reports open to public.
89-329. Termination of licenses and permits by board.
89-330. State and agents not liable for acts of private persons.
89-331. Violation as misdemeanor—continuing violations.

89-301 to 89-309. (349.54 to 349.62) **Repealed.**

Repeal

These sections (Secs. 1 to 9, Ch. 176, L. 1935), relating to development of state resources by the state planning board, were repealed by Sec. 10, Ch. 19, Laws 1967.

89-310. Definitions. As used in this act unless the context clearly indicates otherwise:

(1) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods, the natural development of any or all atmospheric cloud forms or precipitation forms which occur in the troposphere.

(2) "Research and development" means theoretical analysis, exploration and experimentation, and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(3) "Department" means the department of natural resources and conservation, as provided in Title 82A, chapter 15.

History: En. Sec. 1, Ch. 20, L. 1967; amd. Sec. 1, Ch. 368, L. 1973.

Title of Act

An act to control weather modification activities and designating the state water conservation board as the agency to administer this act.

Amendments

The 1973 amendment divided the former language into the preliminary clause and subdivision (1); and added subdivisions (2) and (3).

89-311. Montana water resources board responsible for administration—expenses of members. The state water conservation board, hereafter referred to as the "board," is the state agency responsible for administration of this act. Members of the board shall receive no compensation for the performance of their duties under the provisions of this act but shall be reimbursed for expenses necessarily incurred.

History: En. Sec. 2, Ch. 20, L. 1967.

Cross-References

Water resources board, formerly the state water conservation board, abolished and functions transferred, sec. 82A-1505 (1).

89-312. Acquisition of property—acceptance and expenditure of funds—research and development authority. In addition to any other acts authorized by law the department may:

(1) acquire materials, equipment and facilities as are necessary to perform its duties under this act;

(2) receive any funds which may be offered or become available from federal grants or appropriations, private gifts, donations, bequests, or any other source and unless their use is restricted, may expend the funds for the administration of this act;

(3) make such studies and investigations, and obtain such information as the department may deem necessary in exercising its authority in the administration or enforcement of this act;

(4) co-operate with public or private agencies in the performance of the department's functions or duties and in furtherance of the purposes of this act;

(5) represent the state in any and all matters pertaining to plans, procedures or negotiations for interstate compacts relating to weather modification and control;

(6) enter into co-operative agreements with the United States government or any of its agencies, or with the various counties and cities of this state or with any private or public agencies for conducting weather modification or cloud seeding operations;

(7) act for and represent the state and the counties, cities and private or public agencies in contracting with private concerns for the performance of weather modifications or cloud seeding operations; and

(8) conduct and may make arrangements including contracts and agreements for the conduct of, research and development activities relating to:

(a) the identification and evaluation of meteorological, environmental, ecological, agricultural, economic, hydrological and sociological impacts of weather modification in Montana;

(b) the theory and development of methods of weather modification and control, including processes, materials and devices relating thereto;

(c) the utilization of weather modification and control for agricultural, industrial, commercial, recreational and other purposes;

(d) the protection of life and property during research and operational activities.

History: En. Sec. 3, Ch. 20, L. 1967; amd. Sec. 2, Ch. 368, L. 1973.

Amendments

The 1973 amendment substituted "department" for "board" in the preliminary clause; deleted subdivision (1), which authorized the establishment of advisory committees; renumbered subdivisions (2) and (3) as (1) and (2); and added subdivisions (3) through (8).

89-312.1. Standards for research in weather modification control. The department may establish by rule standards and instructions to govern the carrying out of research and development or projects in weather modification and control as it deems necessary or desirable to minimize danger to health, safety, welfare or property.

History: En. Sec. 3, Ch. 368, L. 1973.

Title of Act

An act amending sections 89-310, 89-

312, 89-314 and 89-318, R. C. M. 1947; adding new provisions broadening the scope of weather modification by authorizing more extensive research and development of weather modification.

89-313. License and permit required for weather modification and control. No person shall engage in activities for weather modification and control except under, and in accordance with, a license and a permit issued by the board authorizing such activities.

History: En. Sec. 4, Ch. 20, L. 1967.

89-314. Board to review applications—exemptions. The board shall review all applications for weather modification activities and may provide by rule for exempting from the license and permit requirements of this act:

(1) research and development, and experiments by state and federal agencies, institutions of higher learning and bona fide nonprofit research organizations and their agents;

(2) laboratory research and experiments;

(3) activities of an emergency character for protection against fire, frost, sleet, or fog; and

(4) activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail.

History: En. Sec. 5, Ch. 20, L. 1967; amd. Sec. 4, Ch. 368, L. 1973.

Amendments

The 1973 amendment substituted "requirements of this act" for "fees" at the end of the preliminary clause; and made minor changes in style.

89-315. Issuance of license—qualifications of licensees. The license to engage in activities for weather modification and control shall be issued, in accordance with procedures and subject to conditions the board may by rule establish to effectuate the provisions of this act, to applicants who demonstrate competence in the field of meteorology to the satisfaction of the board. If the applicant is an organization, these requirements must be met by the individual who will be in charge of the operation for the applicant.

History: En. Sec. 6, Ch. 20, L. 1967.

89-316. Term of license—renewal. The license shall be issued for a period to expire at the end of the calendar year in which it is issued and, if the licensee possesses the qualifications necessary for the issuance of a new license, shall upon application be renewed at the expiration of the period.

History: En. Sec. 7, Ch. 20, L. 1967.

89-317. License fee. A license shall be issued or renewed only upon the payment to the board of one hundred dollars ($100) for the license or renewal.

History: En. Sec. 8, Ch. 20, L. 1967.

89-318. Issuance of permits—requirements for permit—hearing. (1) The permits shall be issued in accordance with procedures and subject to conditions the board of natural resources and conservation may by rule establish to effectuate the provisions of this act, only:

(a) if the applicant is licensed pursuant to this act;

(b) if sufficient notice of intention is published and proof of publication is filed as required in section 89-322 of this act;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in section 89-323 of this act;

(d) if the fee for the permit is paid as required in section 89-324 of this act;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good;

(2) A public hearing may be held in the area to be affected by the issuance of the permit, if the department determines that such a hearing is necessary. The department may assess the permit applicant for the costs incurred by the department in holding the hearing.

History: En. Sec. 9, Ch. 20, L. 1967; amd. Sec. 1, Ch. 214, L. 1973; amd. Sec. 5, Ch. 368, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 214 and once by Ch. 368. The amendatory acts appear to be in conflict as to the first sentence in subsection (2). Since chapter 368 is the later of the two enactments, the language of that amendment is shown above. Other provisions of the amendments do not appear to conflict and the compiler has made a composite section embodying the changes made by both amendments in the nonconflicting provisions.

Amendments

Chapter 214, Laws of 1973, designated the language in the former section as subsection (1); substituted letter designations (a) to (e) in subsection (1) for numeral designations (1) to (5); inserted "of natural resources and conservation" after "board" in the preliminary paragraph of subsection (1); substituted a new subsection (2) for a subdivision (6) reading "if the board has held an open hearing in the area to be affected as to such issuance"; and made minor changes in style. As enacted by Ch. 214, the first sentence of subsection (2) read: "The department of natural resources and conservation shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary."

Chapter 368, Laws of 1973, substituted the first sentence of subsection (2) for the former subdivision (6) quoted above.

Effective Date

Section 2 of Ch. 214, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 8, 1973.

89-319. Separate permit for each operation. "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce, a certain modifying effect within one (1) geographical area over one continuing time interval not exceeding one (1) year.

History: En. Sec. 10, Ch. 20, L. 1967.

89-320. Notice of intention to apply for permit—activities limited by terms of permit. Prior to undertaking any weather modification and control activities, the applicant for a permit shall file with the board, and also have published, a notice of intention. If a permit is issued, the holder

of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred.

History: En. Sec. 11, Ch. 20, L. 1967.

89-321. Contents of notice of intention. The notice of intention shall set forth at least the following:

(1) the name and address of the applicant;

(2) the nature, purpose, and objective of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which, and the approximate time during which, the operation will be conducted;

(4) the area which is intended to be affected by the operation;

(5) the materials and methods to be used in conducting the operation.

History: En. Sec. 12, Ch. 20, L. 1967.

89-322. Publication of notice of intention. (1) The applicant shall have notice of intention, or that portion thereof including the items specified in section 12 [89-321] of this act, published at least once a week for two (2) consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one (1) county or if the affected area is located in more than one (1) county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) Proof of publication, made in the manner provided by law, shall be filed by the applicant with the board sooner than the sixteenth day after the date of the last publication of the notice.

History: En. Sec. 13, Ch. 20, L. 1967.

89-323. Proof of financial responsibility by applicant. Proof of financial responsibility may be furnished by an applicant by his showing, to the satisfaction of the board, ability to respond in damages for liability which might reasonably be attached to, or result from, his weather modification and control activities.

History: En. Sec. 14, Ch. 20, L. 1967.

89-324. Permit fee—time of payment. The fee to be paid by each applicant for a permit shall be equivalent to one per cent (1%) of the estimated cost of such operation, the estimated cost to be computed by the board from the evidence available to it. The fee is due and payable to the board as of the date of issuance of the permit; however, if the applicant is able to give satisfactory security for the payment of the balance he may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty per cent (50%) of the fee. The balance due shall be paid within three (3) months from the date of termination of the operation as prescribed in the permit.

History: En. Sec. 15, Ch. 20, L. 1967; amd. Sec. 1, Ch. 151, L. 1969.

Amendments

The 1969 amendment substituted "one per cent (1%)" for "one and one-half per cent (1½%)" in the first sentence.

89-325. Account in agency fund—fees used to pay expenses. There is established an account in the agency fund to be known as the "weather modification board account." All license and permit fees paid to the board shall be deposited in this account and used to pay the expenses of administering this act.

History: En. Sec. 16, Ch. 20, L. 1967.

89-326. Records of operations maintained by licensees. Every licensee shall keep and maintain a record of all operations conducted by him under his license and each permit, showing:

(1) the method employed;

(2) type of equipment used;

(3) kinds and amounts of material used;

(4) times and places of operation of the equipment;

(5) names and addresses of all individuals participating or assisting in the operation;

(6) any other general information as the board may require.

History: En. Sec. 17, Ch. 20, L. 1967.

89-327. Reports of operations. The board shall require written reports, in a manner as it provides, of each operation for which a permit is issued. The board shall also require reports from any organization that is exempt from license and permit requirements as provided in section 5 [89-314] of this act.

History: En. Sec. 18, Ch. 20, L. 1967.

89-328. Records and reports open to public. The records and reports in the custody of the board shall be open for public examination.

History: En. Sec. 19, Ch. 20, L. 1967.

89-329. Termination of licenses and permits by board. After notice to the licensee and a reasonable opportunity for a hearing, the board may modify, suspend, revoke, or refuse to renew, any license or permit issued if it appears that the licensee no longer possesses the qualifications necessary or if it appears that the licensee has violated any of the provisions of this act; or in the case of a modification, that it is necessary for the protection of the health or the property of any person.

History: En. Sec. 20, Ch. 20, L. 1967.

89-330. State and agents not liable for acts of private persons. Nothing in this act shall be construed to impose or accept any liability or responsibility on the part of the state, the board, or any state officials or employees for any weather modification and control activities of any private person or group.

History: En. Sec. 21, Ch. 20, L. 1967.

89-331. Violation as misdemeanor—continuing violations. A person violating any provision of this act is guilty of a misdemeanor, and a con-

tinuing violation is punishable as a separate offense for each day during which it occurs.

History: En. Sec. 22, Ch. 20, L. 1967.

Separability Clause

Section 23 of Ch. 20, Laws 1967 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

CHAPTER 7—DAMS AND RESERVOIRS—CONSTRUCTION AND EXAMINATION OF

Section 89-702. Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity.
89-702.1. Jurisdiction of department.

89-702. (2659) Dams and dikes to be constructed in a secure manner—proceedings upon complaint of insecurity. (1) A person, association, or corporation may not construct, or cause to be constructed, a dam or dike for the purpose of accumulating, storing, appropriating, or diverting any of the waters of this state, except in a thorough, secure, and substantial manner.

(2) The department of natural resources and conservation may at any time on its own motion, and it shall, upon complaint on oath being made to the department by three (3) or more persons residing or having property in such location, that their homes or property would be in danger of destruction or damage in event of flood occurring on account of the breaking of any dam or dike of any reservoir within the state, and that they have reason to believe said reservoir is in an unsafe condition, or that it is being filled with water to such an extent as to render it unsafe, immediately examine, or cause to be examined, the reservoir. If, upon the examination, the department finds that the reservoir is unsafe, or is being filled with water to such an extent as to render it unsafe, it shall notify the county attorney of the county in which the reservoir is located, setting forth its findings, and the county attorney shall immediately take the necessary steps to abate the danger and make the structure safe.

(3) If either party is dissatisfied with the findings of the department, it may appeal to the district court of the district wherein the reservoir is located, and the court shall hear and determine the matter at the earliest practical time, subject to the right of either party to appeal as in other civil cases; however, the judgment of the department shall control until the final determination of the case.

History: Sec. 2139, Rev. C. 1907; amd. Sec. 1, Ch. 168, L. 1917; re-en. Sec. 2659, R. C. M. 1921; amd. Sec. 5, Ch. 280, L. 1965; amd. Sec. 1, Ch. 370, L. 1971; amd. Sec. 1, Ch. 209, L. 1973.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in five places; and made minor changes in phraseology.

The 1971 amendment inserted "The Montana water resources board, at any time, on its own motion or" in the beginning of the second paragraph; and substituted "state water resources board" for "state water conservation board" in five places.

The 1973 amendment divided the former section into three subsections; substituted references to the department of natural resources and conservation for

references to the water resources board in subsection (2); inserted "may" following "department of natural resources and conservation"; inserted "and it shall" before "upon complaint" near the beginning of subsection (2); and made minor changes in style and phraseology.

89-702.1. Jurisdiction of department. Jurisdiction of the department under section 89-702 applies to any dam or dike which does or will impound or divert water, and which:

(1) has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more; or,

(2) is twenty-five (25) feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the dam or dike, or from the lowest elevation of the outside limit of the dam or dike, if it is not across a stream channel or watercourse, to the maximum storage elevation.

History: En. Sec. 2, Ch. 370, L. 1971; amd. Sec. 2, Ch. 209, L. 1973.

Title of Act

An act to allow the Montana water resources board, upon its own motion, to inspect and determine safety of dams or dikes; amending section 89-702, R. C. M., 1947.

Amendments

The 1973 amendment substituted "department under section 89-702" for "water resources board"; divided the former section into the preliminary clause and the present subdivision (1); inserted "maximum" in subdivision (1); reduced the capacity specified in subdivision (1) from 100 to 50 acre-feet; and added subdivision (2).

CHAPTER 8—WATER RIGHTS—APPROPRIATION AND ADJUDICATION

Section 89-865. Short title.
89-866. Declaration of policy and purpose.
89-867. Definitions.
89-868. Powers and duties of department.
89-869. Powers and duties of board.
89-870. Determination of existing rights.
89-871. Data for determination of existing rights.
89-872. Declarations of existing rights.
89-873. Filing of petition.
89-874. Contents of petition.
89-875. Preliminary decree.
89-876. Hearing on preliminary decree.
89-877. Final decree.
89-878. Appeals from final decree.
89-879. Certificate of water right.
89-880. Right to appropriate—application for permit.
89-881. Notice of application.
89-882. Objections.
89-883. Hearings on objections.
89-884. Action on application.
89-885. Criteria for issuance of permit.
89-886. Terms of permit.
89-887. Revocation of permit.
89-888. Certificate of water right.
89-889. Reservoirs.
89-890. Reservation of waters.
89-891. Priority.
89-892. Changes in appropriation rights.
89-893. Transfer of appropriation right.
89-894. Abandonment of appropriation right.
89-895. Procedure for declaring appropriation rights abandoned.
89-896. Supervision of water distribution.

89-897. Prevention of waste.
89-898. Entry on land—inspections.
89-899. Legal assistance.
89-8-100. Hearings before board—Administrative Procedure Act.
89-8-101. Penalties.
89-8-102. Deposit of fees and penalties.

89-801 to 89-801.2, 89-802 to 89-804. (7093 to 7096) Repealed.

Repeal

Sections 89-801 to 89-801.2, 89-802 to 89-804 (Secs. 1 to 4, pp. 130, 131, L. 1885; Sec. 1, p. 152, L. 1901; Secs. 1, 2, Ch. 228, L. 1921; Secs. 1 to 3, Ch. 345, L. 1969), relating to right to appropriate water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880, 89-891 and 89-892.

89-807 to 89-816. (7098 to 7106) Repealed.

Repeal

Sections 89-807 to 89- 816 (Secs. 5 to 13, pp. 131 to 133, L. 1885; Sec. 1, Ch. 44, L. 1905; Sec. 3, Ch. 228, L. 1921; Sec. 1, Ch. 64, L. 1937; Sec. 6, Ch. 158, L. 1967), relating to priority and recording of water appropriations, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-888 to 89-892.

89-820. (7110) Right to construct dams and raise water, etc.

Prescriptive Easement

This section has no application in case of prescriptive easement in water right since dominant tenement will not be required to pay for an easement acquired by prescription. O'Connor v. Brodie, 153 M 129, 454 P 2d 920.

89-821, 89-822. (7111, 7112) Repealed.

Repeal

These sections (Secs. 10, 11, p. 58, L. 1870), relating to ditches, dikes, flumes and canals crossing highways, were repealed by Sec. 12-109, Ch. 197, Laws 1965, effective December 31, 1966.

89-829 to 89-842. (7119 to 7124.1, 7125 to 7131) Repealed.

Repeal

Sections 89-829 to 89-842 (Sec. 1, Ch. 95, L. 1905; Secs. 1 to 3, Ch. 185, L. 1907; Secs. 4 to 12, Ch. 228, L. 1921; Secs. 1, 2, Ch. 38, L. 1927; Sec. 1, Ch. 179, L. 1957), relating to appropriation of waters of adjudicated streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-844, 89-845. (7133, 7134) Repealed.

Repeal

Sections 89-844, 89-845 (Sec. 1, Ch. 70, L. 1905; Sec. 12, Ch. 185, L. 1907), relating to the effect of a decree of water rights and to the taking of ditches by eminent domain by the United States, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see sec. 89-877.

89-847 to 89-855. Repealed.

Repeal

Sections 89-847 to 89-855 (Secs. 1 to 9, Ch. 185, L. 1939; Secs. 6 to 9, Ch. 280, L. 1965), relating to adjudication of water rights in streams, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-870 to 89-879.

89-857 to 89-864. Repealed.

Repeal

Sections 89-857 to 89-864 (Secs. 1 to 8, Ch. 114, L. 1957), relating to the use of natural channels of unadjudicated streams for distribution of stored waters, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-889.

89-865. Short title. This act shall be known and may be cited as the "Montana Water Use Act."

History: En. Sec. 1, Ch. 452, L. 1973.

Title of Act

An act providing a system for the appropriation and use of surface and groundwater; providing a procedure for the determination and confirmation of existing water rights; establishing a system of centralized records of all water rights; repealing sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, and 89-2935, R. C. M. 1947; amending sections 89-1001, 89-2911, 89-2915, 89-2917, and 89-2918, R. C. M. 1947.

89-866. Declaration of policy and purpose. (1) Pursuant to article IX of the Montana constitution, the legislature declares that any use of water is a public use, and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this act.

(2) A purpose of this act is to implement article IX, section 3(4) of the Montana constitution, which requires that the legislature provide for the administration, control, and regulation of water rights and establish a system of centralized records of all water rights. The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation and future beneficial use and development of Montana's water for the state and its citizens, and for the continued development and completion of the comprehensive state water plan.

(3) It is the policy of this state and a purpose of this act to encourage the wise use of the state's water resources by making them available for appropriation consistent with this act, and to provide for the wise utilization, development, and conservation of the waters of the state for the maximum benefit of its people with the least possible degradation of the natural aquatic ecosystems. In pursuit of this policy, the state encourages the development of facilities which store and conserve waters for beneficial use, for the maximization of the use of those waters in Montana, for the stabilization of stream flows, and for groundwater recharge.

(4) Pursuant to article IX, section 3(1) of the Montana constitution, it is further the policy of this state and a purpose of this act to recognize and confirm all existing rights to the use of any waters for any useful or beneficial purpose.

History: En. Sec. 2, Ch. 452, L. 1973.

89-867. Definitions. Unless the context requires otherwise, in this act:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 26 [89-890].

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to the effective date of this act.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 16 through 23 [89-880 through 89-887].

(8) "Certificate" means the certificate of water right issued by the department under sections 15, 16 (4), and 24 [89-879, 89-880 (4), and 89-888].

(9) "Declaration" means the declaration of an existing right filed with the department under section 8 [89-872].

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(12) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(13) "Director" means the director of natural resources and conservation, a position provided for in section 82A-1510.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 3, Ch. 452, L. 1973.

89-868. Powers and duties of department. (1) The department shall:

(a) enforce and administer this act and rules adopted by the board under section 5 [89-869];

(b) prescribe procedures, forms, and requirements for applications, permits, certificates, declarations, and proceedings under this act, and prescribe the information to be contained in any application, declaration or other document to be filed with the department under this act;

(c) keep in its Helena office a centralized public record of permits, certificates, declarations, applications, and other documents filed in its office under this act;

(d) co-operate with, assist, advise, and co-ordinate plans and activities with the federal, state, and local agencies in matters relating to this act;

(e) upon request by any person, co-operate with, assist, and advise that person in matters pertaining to measuring water or filing declarations with the department under this act.

(2) The department may:

(a) enter into agreements with federal, state, or local agencies necessary to carry out this act;

(b) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other public or private source for the purposes of this act.

History: En. Sec. 4, Ch. 452, L. 1973.

89-869. Powers and duties of board. (1) The board may prescribe fees or service charges for any public service rendered by the department under this act or under Title 89, chapter 29, including fees for the filing of applications or for the issuance of permits and certificates. There shall be no fees for the filing of declarations or for the issuance of certificates of existing rights.

(2) The board may adopt rules necessary to implement and carry out the purposes and provisions of this act. These rules may include, but are not limited to, rules to:

(a) govern the issuance and terms of interim permits authorizing an applicant for a regular permit under this act to begin appropriating water immediately, pending final approval or denial by the department of the application for a regular permit;

(b) require the owner or operator of appropriation facilities to install and maintain suitable controlling and measuring devices;

(c) require the owner or operator of appropriation facilities to report to the department the readings of measuring devices at reasonable intervals, and to file reports on appropriations;

(d) regulate the construction, use and sealing of wells to prevent the waste, contamination or pollution of groundwater.

(3) The board shall adopt rules providing for and governing temporary emergency appropriations, without prior application for a permit, necessary to protect lives or property.

History: En. Sec. 5, Ch. 452, L. 1973.

89-870. Determination of existing rights. (1) The department shall establish a centralized record system of all existing rights, and the department shall, as soon as practicable, begin proceedings under this act to determine existing rights. To accomplish this, the department shall gather data essential to the proper understanding and determination of those existing rights.

(2) The department may select and specify areas or sources where the need for a determination of existing rights is most urgent, and first begin proceedings under this act to determine the existing rights in those areas or sources.

History: En. Sec. 6, Ch. 452, L. 1973.

89-871. Data for determination of existing rights. The data gathered by the department for the determination of existing rights shall include, but are not limited to:

(1) court decrees adjudicating water rights in a proceeding commenced prior to the effective date of this act. Upon request of the department, the clerks of the district courts shall furnish the department copies of all decrees affecting water rights;

(2) declarations of existing rights filed under section 8 [89-872];

(3) records of rights acquired under the groundwater code (sections 89-2911 through 89-2936);

(4) notices of appropriation filed under sections 89-801.2 and 89-810;

(5) records of declarations filed under sections 89-121 and 89-813;

(6) records of statements filed under section 89-907;

(7) the findings of water resource surveys conducted by the department and its predecessor agencies;

(8) the findings of inspections, surveys, reconnaissance, and investigations of the area or source involved as the department makes.

History: En. Sec. 7, Ch. 452, L. 1973.

Compiler's Notes

Sections 89-2912, 89-2913, 89-2919 to 89-2925 and 89-2935, contained in the reference to sections 89-2911 through 89-2936 in subdivision (3), were repealed by Sec. 46, Ch. 452, Laws 1973. Sections 89-801.2 and 89-810, referred to in subdivision (4), sections 89-121 and 89-813, referred to in subdivision (5), were repealed by Sec. 46, Ch. 452, Laws 1973.

DECISIONS UNDER FORMER LAW

Defective Notice of Appropriation

A notice of appropriation filed before the 1885 act but defective in that it was not verified as required by former sections 89-810 and 89-813 not only was not accorded the status of prima facie evidence under former section 89-814 but was not even admissible in evidence. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 111.

Where a notice of appropriation was dated 1886, referred to acts taking place in 1886, and was recorded in 1886, but the notary's certificate was dated 1885, it is obvious from the instrument itself that the date in the notary's certificate was a clerical error, and the notice may be received as prima facie evidence of a right dating from 1886. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 112.

Rebuttal of Prima Facie Evidence

A notice of appropriation meeting the requirements of former section 89-810 and filed in 1886 was admissible in evidence and entitled to be treated as prima facie evidence under former section 89-814 but was not sufficient in itself to establish a water right from that date when its efficacy was destroyed by the claimant's own statement that he first used the water in 1961. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 113.

89-872. Declarations of existing rights. (1) The department shall make an order requiring each person claiming an existing right within a specified area or from a specified source to file a declaration of existing right within one (1) year after the effective date of the order. The department shall publish notice of the order once a week for four (4) consecutive weeks prior to its effective date in a newspaper of general circulation in the affected area. Before the last date of publication, the department shall also serve a copy of the order by certified mail upon each appropriator or his successor in interest within the specified area or from the specified source who has requested mailed notice of the order or of whom the department can readily obtain knowledge, and to each person owning or being possessed of lands bordering on the stream or source as ascertained from the land ownership records of the appropriate

county. The department shall file in its records proof of service of the notice by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) A declaration shall be made under oath by each person claiming an existing right to use water within the specified area or from the specified source on a form provided by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The information required by the department may include, but is not limited to, the date of appropriation, the date the water was first applied to a beneficial use, the amount of water appropriated, the purpose of the appropriation, the place and means of diversion, the place of use, the time during which the water is diverted and used each year, and a true copy or the docket number of any judicial decree, notice, or other claim or evidence upon which the existing right was initiated or is based.

(3) Declarations shall be sent to the department by certified mail, with a return receipt requested. The return receipt is conclusive evidence of receipt, by the department, of the declaration.

History: En. Sec. 8, Ch. 452, L. 1973.

89-873. Filing of petition. (1) The department shall, within a reasonable time after gathering all data necessary under section 7 [89-871] of this act, file a petition for determination of existing rights in the source or area specified in the order made under section 8 [89-872]. The department shall file the petition in the district court of the judicial district in which the source or area is located.

(2) If the source or area is in two (2) or more judicial districts, the department shall notify the district court of each of the judicial districts of its intent to file the petition. Within thirty (30) days of receipt of the notice, the judges of those district courts shall agree on which district judge shall hear the petition and shall notify the department of their decision. If the district judges fail to agree or to notify the department, the department shall file the petition in the district court of the judicial district in which the greatest number of persons named in the petition reside.

History: En. Sec. 9, Ch. 452, L. 1973.

89-874. Contents of petition. (1) The petition shall state the names of all persons who have filed declarations under section 8 [89-872] of this act and of all other persons who appear from the data gathered by the department to have existing rights to the use of waters within the specified area or from the specified source.

(2) The department shall file with the petition all data gathered under section 7 [89-871] of this act.

(3) If the district court determines that additional data is necessary prior to issuing the preliminary decree in order to determine the extent of an existing right, it may direct the department or the person claiming the right to obtain the necessary data.

History: En. Sec. 10, Ch. 452, L. 1973.

89-875. Preliminary decree. (1) Within a reasonable time after the filing of a petition for determination of existing rights, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted with the petition and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 13 [89-877] of this act.

(3) The district court shall send a copy of the preliminary decree by certified mail with return receipt requested to the department and to each person named in the petition filed under section 9 [89-873] of this act or named in the preliminary decree. The return receipt shall be appended to the preliminary decree. The costs of mailing the copies shall be paid by the department.

(4) A person named in the petition or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data.

History: En. Sec. 11, Ch. 452, L. 1973.

89-876. Hearing on preliminary decree. (1) The department or a person named in the petition filed under section 9 [89-873] of this act or named in the preliminary decree, or any other person for good cause shown, who objects to the preliminary decree is entitled to a hearing thereon before the district court.

(2) A request for a hearing shall be filed with the district court, and a copy served on the department by certified mail, within ninety (90) days after receipt of the preliminary decree. The district court shall, for good cause shown, reasonably extend this time limit if application for the extension is made within ninety (90) days after receipt of the preliminary decree. A person requesting a hearing on his objections to the preliminary decree shall also serve, by certified mail with return receipt requested, a copy of his request on any person whose rights or priorities will be affected if the objections are sustained in the hearing. The rights and priorities of a person who is not served shall not be affected by the result of the hearing.

(3) The request for a hearing shall contain a precise statement of the findings and conclusions, in the preliminary decree, with which the person requesting the hearing disagrees. The request shall specify the paragraphs and pages containing the findings and conclusions to which objection is made. The request shall state the specific grounds and evidence on which the objections are based. The request shall also state the names of all other persons on whom it is served.

(4) If more than one person requests a hearing on objections to the preliminary decree, the court may in its discretion hold a single hearing. Each hearing shall be conducted as are other civil actions, but the parties to the hearing may by agreement and with the court's permission waive any of the procedural or evidentiary rules, or may submit only

written evidence. Only evidence which is referred to in a request may be introduced in a hearing.

(5) In each hearing, the department shall be a party and is entitled to be heard on objections made by any person. The department shall be granted adequate time, prior to a hearing, to gather evidence pertinent to any objection to be heard in the hearing.

History: En. Sec. 12, Ch. 452, L. 1973.

89-877. Final decree. (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the approximate time during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree.

History: En. Sec. 13, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Collateral Attack

A decree giving appropriator the right to use water on certain named land outside the drainage area where appropriated could not be attacked in a later proceeding on the ground that appropriator had never applied water to that land. McIntosh v. Graveley, — M —, 495 P 2d 186.

89-878. Appeals from final decree. (1) A person whose existing rights and priorities are determined in the final decree may appeal the determination only if:

(a) he requested a hearing and appeared and entered objections to the preliminary decree; or

(b) his rights as determined in the preliminary decree were altered as the result of a hearing, at which he appeared, requested by another person.

(2) An appeal from the final decree shall be taken as provided by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 14, Ch. 452, L. 1973.

89-879. Certificate of water right. When a final decree is entered, the court shall send a copy to the department. The department shall, on the basis of the final decree, issue to each person decreed an existing right a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the person to whom the right is decreed.

History: En. Sec. 15, Ch. 452, L. 1973.

89-880. Right to appropriate—application for permit. (1) After the effective date of this act, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (4) of this section, a person may appropriate water only by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(4) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater for domestic, agricultural, or livestock purposes by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well, the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(5) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance with those laws, shall be considered to have complied with all of the filing requirements of this act to the extent it applies to wells subject to those laws. The date of appropriation shall be the date that written notice of intention to drill is given to the board of oil and gas conservation. A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act.

(6) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 5 [89-869] of this act.

History: En. Sec. 16, Ch. 452, L. 1973.

89-881. Notice of application. (1) Upon receipt of a proper application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice in a newspaper of general circulation in the area of the source once a week for three (3) consecutive weeks. Before the last date of publication, the department shall also serve the notice by certified mail upon an appropriator of water or applicant for a holder of a permit who, according to the records of the department, may be affected by the proposed appropriation. A notice shall also be served upon any public agency that has reserved waters in the source under section 26 [89-890]. The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation. The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication, and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than thirty (30) days nor more than sixty (60) days after the last date of publication) persons may file with the department written objections to the application.

History: En. Sec. 17, Ch. 452, L. 1973.

89-882. Objections. (1) An objection to an application must be filed by the date specified by the department under section 17 (2) [89-881 (2)].

(2) The objection must state the name and address of the objector, and facts tending to show that there are no unappropriated waters in the proposed source, that the proposed means of appropriation are inadequate, that the property, rights, or interests of the objector would be adversely affected by the proposed appropriation, or the objector may state any other objections to the proposed appropriation he considers pertinent.

History: En. Sec. 18, Ch. 452, L. 1973.

89-883. Hearings on objections. If the department determines that an objection to an application for a permit states a valid objection to the issuance of the permit, it shall hold a public hearing on the objection within sixty (60) days from the date set by the department for the filing of objections, after serving notice of the hearing by certified mail upon the applicant and the objector. The department may consolidate hearings if more than one (1) objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

History: En. Sec. 19, Ch. 452, L. 1973.

89-884. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested.

History: En. Sec. 20, Ch. 452, L. 1973.

89-885. Criteria for issuance of permit. The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

History: En. Sec. 21, Ch. 452, L. 1973.

89-886. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. It may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this act.

(2) The department may limit the time for commencement of the appropriation works, completion of construction and actual application of the water to the proposad beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. For good cause shown by the permittee, the department may in its discretion reasonably extend time limits.

(3) The original of the permit shall be sent to the county clerk and recorder in the county where the point of diversion or place of use is located for recordation, and a copy shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the permit to the permittee.

History: En. Sec. 22, Ch. 452, L. 1973.

89-887. Revocation of permit. If the work on an appropriation is not commenced, prosecuted, or completed within the time stated in the permit or an extension thereof, or if the water is not being applied to the beneficial use contemplated in the permit, or if the permit is otherwise not being followed, the department may after notice require the permittee to show cause why the permit should not be revoked. If the permittee fails to show sufficient cause, the department may revoke the permit.

History: En. Sec. 23, Ch. 452, L. 1973.

89-888. Certificate of water right. (1) Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been properly completed. The department may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certifi-

cate of water right. The original of the certificate shall be sent to the county clerk and recorder in the county wherein the point of diversion or place of use is located for recordation, and a duplicate shall be kept in the office of the department in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator.

(2) Except as provided in section 16 (4) [89-880 (4)] of this act, a certificate of water right in a particular source may not be issued prior to a general determination under this act of existing rights in that source.

History: En. Sec. 24, Ch. 452, L. 1973.

89-889. Reservoirs. A person intending to appropriate water by means of a reservoir shall apply for a permit as prescribed in this act.

History: En. Sec. 25, Ch. 452, L. 1973.

89-890. Reservation of waters. (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 17 through 19 [89-881 through 89-883]. After the hearing provided in section 19 [89-883], the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall not affect any rights in existence when the order reserving waters is adopted.

(6) The board shall, periodically but not less than every ten (10) years, review existing reservations to ensure that the objectives of the

reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation.

History: En. Sec. 26, Ch. 452, L. 1973.

89-891. Priority. (1) As between appropriators, the first in time is the first in right. Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow, or the lowering of a water table, artesian pressure or water level, if the prior appropriator can reasonably exercise his water right under the changed conditions.

(2) Priority of appropriation made under this act dates from the filing of an application for a permit with the department, except as otherwise provided in section 16 [89-880] of this act.

(3) Priority of appropriation perfected before the effective date of this act shall be determined as provided in sections 6 through 15 [89-870 through 89-879] of this act.

History: En. Sec. 27, Ch. 452, L. 1973.

89-892. Changes in appropriation rights. (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage without receiving prior approval of such change from the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If a person whose rights may be affected files an objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Notice of the proposed change shall be given in accordance with section 17 [89-881] of this act. Objections shall meet the requirements of section 18 (2) [89-882 (2)] of this act, and hearings shall be held in accordance with section 19 [89-883].

History: En. Sec. 28, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Diversion Point Changed

Appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion, and the fact that a water commissioner might have to be employed to oversee the appropriation was not the kind of burden on other appropriators that would prevent the change. McIntosh v. Graveley, — M —, 495 P 2d 186.

Remedies of Servient Owner

Changes in a ditch appurtenant to a water right did not forfeit the ditch right or justify the use of self-help by the servient landowner to fill in a portion of the ditch. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 108.

Substantial Change

Under former section 89-803, the owner of a ditch appurtenant to a water right could change the location by minor meandering along the course of the ditch and its marginal land with a dozer to account for topographical adjustments in the terrain, so long as he did not add any new burden to the servient estate or cause any additional damage thereto. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 109.

Use of Water Changed

Where appropriator had a decreed right to use water for irrigation of specified land outside the drainage area, his use of the water on other land outside the drainage area did not impose an undue burden on other appropriators, so long

as he did not increase the amount of water diverted from the drainage area. McIntosh v. Graveley, — M —, 495 P 2d 186.

89-893. Transfer of appropriation right. (1) The right to use water under a permit or certificate of water right shall pass with a conveyance of the land, or transfer by operation of law, unless specifically exempted therefrom. All transfers of interests in appropriation rights shall be without loss of priority.

(2) A copy of an instrument which transfers an interest in an appropriation right shall be filed with the department and the county, in which the point of diversion or place of use is located, by the person receiving the appropriation interest.

(3) An appropriator may not sever all or any part of an appropriation right from the land to which it is appurtenant, or sell the appropriation right for other purposes or to other lands, or make the appropriation right appurtenant to other lands, without obtaining prior approval from the department. The department shall approve the proposed transfer if the requirements of section 28 (2) [89-892 (2)] are met.

History: En. Sec. 29, Ch. 452, L. 1973.

89-894. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of his appropriation right with the intention of wholly or partially abandoning the right, or if he ceases using his appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right shall, to that extent, be deemed considered abandoned and shall immediately expire.

(2) If an appropriator ceases to use all or part of his appropriation right, or ceases using his appropriation right according to its terms and conditions, for a period of ten (10) successive years, and there was water available for his use, there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used.

(3) This section does not apply to existing rights until they have been determined in accordance with this act.

History: En. Sec. 30, Ch. 452, L. 1973.

DECISIONS UNDER FORMER LAW

Intent to Abandon

Mere nonuser of a ditch appurtenant to a water right is not sufficient to establish abandonment; there must be concurrent intent to abandon. Shammel v. Vogl, 144 M 354, 396 P 2d 103, 107.

89-895. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned his appropriation right under section 30 [89-894], or when another appropriator in the opinion of the department files a valid claim that he has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the district court which determined the existing rights in the source of the appropriation in question to hold a hearing to deter-

mine whether the appropriation right has been abandoned. Proceedings under this section shall be conducted in accordance with the Montana Rules of Civil Procedure, and appeal shall be taken in accordance with the Montana Rules of Appellate Civil Procedure.

(2) At the hearing, the burden of proof shall be on the department which must establish by a preponderance of the evidence that the appropriation has been abandoned under section 30 [89-894] of this act.

(3) The determination of the court shall be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

History: En. Sec. 31, Ch. 452, L. 1973.

89-896. Supervision of water distribution. (1) As of the effective date of this act, the district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior to the effective date of this act. The supervision shall be governed by the principle that first in time is first in right.

(2) When a water distribution controversy arises upon a source of water in which existing rights have not been determined according to sections 6 through 15 [89-870 through 89-879] of this act, the department may, in its discretion, within a reasonable time begin proceedings to determine existing rights in the source, in accordance with this act. If the department does not proceed to obtain a determination of existing rights, the district court shall settle only the controversy between the parties.

(3) A controversy between appropriators from a source which has been the subject of a general determination of existing rights under sections 6 through 15 [89-870 through 89-879] of this act shall be settled by the district court which issued the final decree. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy shall be appended to the final decree, and a copy shall be filed with the department.

(4) The department shall be named as a party in any proceeding under this section and shall be served with process.

History: En. Sec. 32, Ch. 452, L. 1973.

89-897. Prevention of waste. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, or preventing water from moving to another person having a prior right to use the same, it may petition the district court to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water, or to secure

water to a person having a prior right to its use; the department may attach to the controlling works a written notice properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it, which notice shall be legal notice to all persons interested in the appropriation or distribution of the water; or

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so, and to take such steps as may be necessary to remedy the waste, unlawful use, or interference; or

(2) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin such waste, unlawful use, or interference.

History: En. Sec. 33, Ch. 452, L. 1973.

89-898. Entry on land—inspections. Any employee or agent of the department authorized by the director may enter upon any land to carry out the purpose of this act, including, but not limited to, entry to make inspections the department considers necessary of proposed works, source of water, location of the proposed use, construction of works and other inspections to ascertain whether or not persons are complying with this act. The department or its agent shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to any property.

History: En. Sec. 34, Ch. 452, L. 1973.

89-899. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this act. The department may also employ legal counsel to enforce this act and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana.

History: En. Sec. 35, Ch. 452, L. 1973.

89-8-100. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the department is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R. C. M. 1947) governs administrative proceedings conducted under this act.

History: En. Sec. 36, Ch. 452, L. 1973.

89-8-101. Penalties. A person who violates or refuses or neglects to comply with sections 16 (1), 28 (1), and 29 (3) [89-880 (1), 89-892 (1),

and 89-893 (3)] of this act, or of any order of the department, or of any rule of the board, is guilty of a misdemeanor.

History: En. Sec. 37, Ch. 452, L. 1973.

89-8-102. Deposit of fees and penalties. All fees and penalties collected under this act shall be deposited in the state general fund. All penalties or fines imposed by any court for a violation of this act shall be deposited in the general fund of the county where the court presides and shall be disposed of in the same manner as any other penalty or fine.

History: En. Sec. 38, Ch. 452, L. 1973.

CHAPTER 9—YELLOWSTONE RIVER COMPACT—RATIFICATION OF

Section 89-907. Filing written statement with Montana water resources board.
89-908. Duty to install weir or other measuring device.
89-909. Duty to measure water.
89-912. Montana water resources board to make rules and regulations.
89-914. Montana water resources board to make record available.

89-907. Filing written statement with Montana water resources board. Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall within sixty days after the approval of this act, or before he diverts any water, file with the state water conservation board at its office in Helena, Montana, a written statement containing the following information:

(a) The name of the claimant and his address.

(b) Date of appropriation or the date when the water was first applied to a beneficial use.

(c) The quantity of water claimed.

(d) The name of the stream, river or other source of water from which the diversion is made, if it has a name, and if it does not, such a description as will identify the same.

(e) The purpose for which the water is claimed and the place of intended use.

(f) The means of diversion.

(g) Whether or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion.

(h) If a notice of appropriation was filed with the county clerk and recorder, as provided by section 89-810, the name of the county where it was filed.

(i) Whether the appropriation was made from an adjudicated or nonadjudicated stream, river or other source of water.

The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true.

History: En. Sec. 3, Ch. 92, L. 1953; amd. Sec. 10, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has

been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Section 89-810, referred to in subdivision (h), was repealed by Sec. 46, Ch. 452, Laws 1973.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the first paragraph; and made a minor change in phraseology.

89-908. Duty to install weir or other measuring device. Any person claiming an appropriative right to use any waters of any interstate tributary of the Yellowstone river which right was acquired subsequently to January 1, 1950, shall, after the approval of this act and before he diverts any such water, install in his ditch, or other means of diversion, a weir or other measuring device so that all of the water to be diverted by him can be accurately measured. The installation of a weir or other measuring device is subject to the approval of the state water conservation board, and if in its judgment such weir or other measuring device, or the installation of the same, is defective so that the water cannot be accurately measured, it may order the installation of an accurate measuring device and the claimant shall not divert any water until he complies with such order.

History: En. Sec. 4, Ch. 92, L. 1953; amd. Sec. 11, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in the second sentence; and made minor changes in phraseology.

89-909. Duty to measure water. It shall be the duty of every said claimant to measure all the water being diverted by him and to keep accurate records thereof on forms prescribed and furnished by the state water conservation board, and within fifteen days after the first day of November of each year to file such written records with the state water conservation board at its office in Helena, Montana.

History: En. Sec. 5, Ch. 92, L. 1953; amd. Sec. 12, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer" in two places; and made a minor change in phraseology.

89-912. Montana water resources board to make rules and regulations. The state water conservation board shall prescribe and enforce reasonable rules and regulations consistent with this act and the Yellowstone River Compact.

History: En. Sec. 8, Ch. 92, L. 1953; amd. Sec. 13, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer."

89-914. Montana water resources board to make record available. The state water conservation board shall furnish and make available to the Yellowstone river compact commission, from the records filed in its office, all appropriative rights to the use of the waters of the interstate tributaries of the Yellowstone river in the state of Montana, acquired after January 1, 1950, the amount of the annual diversions from said interstate tributaries and any other information that its records may disclose as may be required by the Yellowstone river compact commission.

History: En. Sec. 10, Ch. 92, L. 1953; amd. Sec. 14, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "state water conservation board" for "state engineer"; and made minor changes in phraseology.

CHAPTER 10—WATER COMMISSIONERS—DETERMINATION OF JOINT RIGHTS

Section 89-1001. Appointment of water commissioners—authority—compensation.

89-1001. (7136) Appointment of water commissioners—authority—compensation. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least fifteen per cent (15%) of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners, who shall have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates and permits issued under the Montana Water Use Act provided that when petitioners make proper showing that they are not able to obtain the application of the owners of at least fifteen per cent (15%) of the water rights affected, and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may, in his discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under the Montana Water Use Act, the judge of the district court which issued the final decree shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department, or any other owner of stored waters may petition the court to have such

stored waters distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the commissioner or commissioners appointed by the court to distribute such stored water when and as released to water users entitled to the use thereof.

(4) Upon the issuance of such order the water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the users thereof as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of the state Water Conservation Act, chapter 1 of this title, to be diverted into and through said streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules and regulations as decreed water rights are admeasured and distributed, and such water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter, and all acts amendatory thereof and supplemental thereto, provided that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights. The purpose of this act is to provide a uniform, equitable and economical distribution of adjudicated, stored and supplemental waters.

(5) At the time of the appointment of such water commissioner or commissioners the district court shall fix their compensation, and the owners and users of the distributed waters shall pay their proportionate share of such fees and compensation.

History: Earlier acts relating to water commissioners were Secs. 1 to 3, pp. 136 and 137, Laws of 1899, and chapter 64, Laws of 1905. These acts appeared as sections 4881 to 4889, Revised Codes 1907, and were repealed by chapter 43, Laws of 1911. This section en. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1925; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973.

Amendments

The 1973 amendment substituted "parties owning water rights in the source affected by the decree" for "parties bound by the decree or decrees" in the middle of subsection (1); inserted "and by any certificates and permits issued under the Montana Water Use Act" immediately before the proviso to subsection (1); inserted subsection (2); renumbered former subsections (2), (3) and (4) as (3), (4) and (5); substituted references to the department of natural resources and conservation for references to the state water conservation board throughout the section; substituted "the distributed waters" for "decreed, stored and supplemental waters" near the end of subsection (5); and made minor changes in phraseology.

References

Allen v. Wampler, 143 M 486, 392 P 2d 82.

89-1015. (7150) Complaint by dissatisfied user—procedure on.

Purpose of Summary Proceeding

The district court had no authority in a proceeding under this section to approve a method of distribution which changed the point of diversion of water to a tract and changed the transportation ditch thereto, as the only function of the court in such a proceeding is to determine whether the water involved is being allocated in compliance with existing decrees and not to decree new water rights. Allen v. Wampler, 143 M 486, 392 P 2d 82.

CHAPTER 12—IRRIGATION DISTRICTS—ORGANIZATION

Section 89-1201. Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of Montana water resources board—payment of expenses.
89-1208. Compensation of commissioners—penalty for interest in contract—bonds of commissioners.

89-1201. (7166) Creation of irrigation districts—percentage of titleholders required—what constitutes evidence of title—report of Montana water resources board — payment of expenses. (1) and (2). * * * [Same as parent volume.]

(3) Before any such district shall be established, there shall be presented to the district court at the hearing on the petition for such establishment, a written report or opinion from the state water conservation board on the engineering features involved and the possibilities of water supplies accompanied by a copy of the decree of the district court showing the adjudicated water rights in said streams from which said waters are to be diverted. For this purpose, a copy of the petition provided for in section 89-1202 and of all maps and other papers filed with the same, shall be filed with the state water conservation board at the time the original petition is filed with the clerk of the district court. The expense, if any, incurred by the state water conservation board in the investigation and report upon the proposed district shall be certified, with the report, and that said board shall, within a period of one hundred twenty days from the filing of said petition with the state water conservation board, render its report, as herein provided, to the said district court, and shall be assessed as costs in said hearing, which costs shall be paid by the district in event of its establishment and in event such petition be denied, then such costs shall be paid by the petitioners; provided, however, that such report or opinion shall be not requested or obtained, and shall not be necessary, whenever it is proposed to co-operate with the United States under the federal reclamation laws heretofore or hereafter enacted, or under any act of Congress which shall permit of the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation or maintenance of constructed works, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district laws.

History: The first irrigation district act was Ch. 70, L. 1907, appearing as Secs. 2309-2402, Rev. C. 1907; repealed by Ch. 146, L. 1909.

This section en. Sec. 1, Ch. 146, L. 1909; amd. Sec. 1, Ch. 153, L. 1917; amd. Sec. 1, Ch. 116, L. 1919; re-en. Sec. 7166, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1923; amd. Sec. 1, Ch. 112, L. 1925; amd. Sec. 15, Ch. 280, L. 1965.

Compiler's Notes

The state water conservation board has been redesignated the Montana water resources board. See paragraph (1), sec. 89-103 herein.

Amendment

The 1965 amendment substituted "the state water conservation board" or "said board" for "the state engineer" or "said engineer" in five places in subsection (3); deleted "(other than his salary)" which followed "incurred by the state engineer" near the beginning of the third sentence of subsection (3); and made other minor changes in phraseology in subsection (3).

89-1208. (7173) **Compensation of commissioners—penalty for interest in contract—bonds of commissioners.** The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive not to exceed twenty dollars ($20), per day for services, and, in addition thereto, their necessary expenses in attending meetings, or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem be approved by a unanimous vote of said board and a mileage allowance of twelve cents ($.12) per mile in attending board meetings or when engaged in the business of the irrigation district.

No commissioner or any other officer named in this act shall in any manner be interested directly or indirectly, in any contract awarded or to be awarded by the board, or in the profits derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished by a fine not exceeding five hundred dollars ($500.00), or by imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

The commissioners of said irrigation district shall each furnish a bond in the penal sum of twenty-five hundred dollars ($2500.00), with corporate surety conditioned for the faithful performance of their duties under this act, and the secretary shall furnish bond, with corporate surety, in the sum of one thousand dollars ($1000.00), conditioned for the faithful performance of his duties pursuant to this act, and for the proper and safekeeping of the records and documents of said district, in all cases where the obligations of said district, either existing or proposed, total two hundred and fifty thousand dollars ($250,000.00) or over. In all other cases the bond for said commissioners shall be in the sum of one thousand dollars ($1000.00).

History: En. Sec. 8, Ch. 146, L. 1909; amd. Sec. 1, Ch. 120, L. 1921; re-en. Sec. 7173, R. C. M. 1921; amd. Sec. 3, Ch. 157, L. 1923; amd. Sec. 1, Ch. 116, L. 1927; amd. Sec. 1, Ch. 15, L. 1929; amd. Sec. 1, Ch. 62, L. 1965; amd. Sec. 1, Ch. 153, L. 1973.

Amendments

The 1965 amendment increased the daily compensation of the commissioners set forth in the first paragraph from $5 to $10.

The 1973 amendment increased the compensation of commissioners from $10 to $20 per day; and added the provision for a mileage allowance at the end of the first paragraph.

89-1215. Records required to be kept—examination by state examiner.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(s).

CHAPTER 13—IRRIGATION DISTRICTS—BOARD OF COMMISSIONERS, POWERS, DUTIES AND ELECTIONS

Section 89-1301. Powers and duties of commissioners.

89-1301. (7174) **Powers and duties of commissioners.** The board of commissioners of every irrigation district established and organized

under and by virtue of this act shall constitute the corporate authority of said district.

(1) to (4). * * * [Same as parent volume.]

(5) But no purchase, lease or contract for purchase of any water, or water rights, or canals, or reservoirs, or reservoir sites, or dam sites, or irrigation works or other property of any nature or kind or for the making or purchasing of surveys, maps, plans, estimates and specifications, or for the purchase of machinery for pumping plants, or the erection of buildings, aqueducts and other structures necessarily used in connection with such pumping plants, for a price or rental in excess of twenty-five thousand dollars ($25,000), shall be final or binding upon the district, nor shall said sum be paid without the written consent or petition of at least a majority in number and acreage of the holders of title or evidence of title to the lands within the district. Any splitting or division of such purchase, lease or contract with the purpose or intention of avoiding or circumventing the provisions of this section shall render such divided or split contract or contracts absolutely null and void.

(6) to (13). * * * [Same as parent volume.]

History: En. Sec. 9, Ch. 146, L. 1909; amd. Sec. 2, Ch. 145, L. 1915; amd. Sec. 3, Ch. 153, L. 1917; amd. Sec. 3, Ch. 116, L. 1919; re-en. Sec. 7174, R. C. M. 1921; amd. Sec. 4, Ch. 157, L. 1923; amd. Sec. 1, Ch. 111, L. 1973.

Amendments

The 1973 amendment increased the amount specified in subdivision (5) from $10,000 to $25,000.

CHAPTER 17—IRRIGATION DISTRICTS—BONDS

Section 89-1701. Limitations on debt-incurring power.
89-1705. Details relating to bonds.
89-1706. Liens of bonds.
89-1708. Delivery of bonds—disposition of proceeds.

89-1701. (7208) **Limitations on debt-incurring power.** The board of commissioners or other officers of the district shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, except as provided in this act; and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void, except that for the purpose of organization or for any of the immediate purposes of this act, or to make or purchase surveys, plans, and specifications, or for stream gauging and gathering data, or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district, and may cause warrants of the district to issue therefor.

History: En. Sec. 38, Ch. 146, L. 1909; amd. Sec. 1, Ch. 110, L. 1913; amd. Sec. 1, Ch. 127, L. 1913; re-en. Sec. 7208, R. C. M. 1921; amd. Sec. 32, Ch. 234, L. 1971. See also Sec. 89-1901.

Amendments

The 1971 amendment deleted from the end of the section "bearing interest at the rate not to exceed six per centum per annum."

89-1705. (7212) **Details relating to bonds.** (1) All bonds issued under the provisions of this act shall be payable in gold coin of the United

States, of the standard weight and finances [fineness] existing at the time of the issue; and shall run for a period not longer than forty (40) years from their date, but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after five (5) years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued shall run for a longer period than forty (40) years from the date of issue. Said bonds shall bear interest from their date until paid, payable annually or semiannually, the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. Said bonds and interest coupons shall be payable at such place or places, within or without the state of Montana, as the board of commissioners shall prescribe.

(2) Such bonds shall be of such denomination or denominations, and in such form, as the board of commissioners shall prescribe. An issue of bonds is hereby defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of said bonds, or may divide any issue into two (2) or more divisions and fix different dates for the bonds of each respective division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 42, Ch. 146, L. 1909; amd. Sec. 1, Ch. 17, Ex. L. 1919; re-en. Sec. 7212, R. C. M. 1921; amd. Sec. 8, Ch. 157, L. 1923; amd. Sec. 12, Ch. 260, L. 1959; amd. Sec. 33, Ch. 234, L. 1971.

Compiler's Notes

The compiler has inserted the bracketed word "fineness." This was the term used prior to 1971 amendment.

Amendments

The 1971 amendment deleted "at a rate not to exceed six per centum per annum" after "until paid" in the third sentence of subsection (1); and made minor changes in style.

89-1706. (7213) **Liens of bonds.** All bonds issued hereunder and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, shall be a lien upon all the lands originally or at any time included in the district for the irrigation and benefit of which said irrigation district was organized and said bonds were issued, and for the benefit of which such contract between the district and the United States was made, except upon such lands as may at any time be included in such district on account of the exchange or substitution of water under the provisions of section 89-1611, if any there be; and all such lands shall be subject to a special tax or assessment for the payment of the interest on and principal of said bonds; and all amounts to be paid to the United States under any such contract between the district and the United States, and

said special tax or assessment, shall constitute a first and prior lien on the land against which levied, to the same extent and with like force and effect as taxes levied for state and county purposes.

All liens herein created shall remain upon the lands for a period of eight (8) years after the date of maturity of the obligation; thereafter, the lands and the titles thereto shall be free from any such liens.

History: En. Sec. 43, Ch. 146, L. 1909; amd. Sec. 12, Ch. 145, L. 1915; amd. Sec. 8, Ch. 153, L. 1917; amd. Sec. 8, Ch. 116, L. 1919; re-en. Sec. 7213, R. C. M. 1921; amd. Sec. 1, Ch. 190, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-1708. (7215) Delivery of bonds—disposition of proceeds. In the event that bonds are sold for cash, they shall be delivered by the board of commissioners to the county treasurer of the county wherein the office of the district is located, who shall deliver them to the purchaser upon receipt of the purchase price therefor, and after making a complete record of the same. Delivery of the bonds sold may be made by the county treasurer to the purchaser at any place or places within or without the state of Montana, and said county treasurer may receive the proceeds of the sale of said bonds at said place or places of delivery. The county treasurer shall thereupon place the proceeds of said sale to the credit of said district; and the same shall be paid out by the county treasurer only upon the written order of the board of commissioners, signed by the president and secretary under the seal of the district. Said proceeds shall be expended for the purpose or purposes for which said bonds were issued, and for no other. Provided, in case any portion of the funds realized from the sale of bonds are not needed immediately for the purpose for which said bonds were issued, the board of commissioners whenever, in its judgment, the same may be to the best interests of the district, shall have the power and authority to direct the investment of such funds, and any other surplus funds of the district, or any portion thereof, in interest-bearing securities of the United States, or of the state of Montana, or in interest-bearing certificates of deposit of national or state banks approved by the state superintendent of banks; provided, however, that in the event of such deposit said banks shall first furnish an indemnity bond to be approved by said board of commissioners and the state superintendent of banks. The county treasurer shall transfer to the credit of the district, and place to the credit of such fund or funds as the board of commissioners may direct, all interest received upon money or securities of the district entrusted to his care.

History: En. Sec. 45, Ch. 146, L. 1909; re-en. Sec. 7215, R. C. M. 1921; amd. Sec. 10, Ch. 157, L. 1923; amd. Sec. 1, Ch. 258, L. 1967.

Amendments

The 1967 amendment inserted "and any other surplus funds of the district" after "investment of such fund" in the fifth sentence.

CHAPTER 18—IRRIGATION DISTRICTS—TAXES AND ASSESSMENTS

Section 89-1801. Tax or assessment to pay bonds and interest.
89-1804. Annual tax levy—apportionment when tracts divided.
89-1811. County treasurer as custodian of district funds.
89-1812. Collection of taxes or assessment.

89-1801. (7232) **Tax or assessment to pay bonds and interest.** (1). * * * [Same as parent volume.]

(2) It shall be the duty of the board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district, mentioned in section 89-1703, to provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment as aforesaid, sufficient in amount to meet the interest on said bonds promptly when and as the same accrues, and to discharge the principal thereof at their maturity, or respective maturities, and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as in section 89-1301 provided, at the times such payments by such contract become due and payable. Where straight maturity bonds are issued, it shall be the duty of the board of commissioners of the district to create and maintain a sinking fund sufficient to pay and discharge said bonds at maturity. If said bonds shall be issued for twenty (20) years or less, there shall be annually levied for such sinking fund a special tax or assessment, as aforesaid, sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if said bonds are issued for more than twenty (20) years, then it shall not be necessary to levy a special tax or assessment for sinking fund until the twentieth year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient to produce a net sum equal to one-twentieth (1/20) part of the aggregate amount of the principal of the bonds.

(3). * * * [Same as parent volume.]

(4) In the event that for any reason any special tax or assessment hereinabove provided for cannot or shall not be levied and collected in time to meet any interest falling due on any bonds issued hereunder, then the board of commissioners shall have the power and authority, and it shall be their duty, to provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated, or by warrants drawn against the next district tax or assessment levied or to be levied. Said warrants shall be in addition to those mentioned in section 89-1701.

(5). * * * [Same as parent volume.]

History: En. Sec. 46, Ch. 146, L. 1909; amd. Sec. 14, Ch. 145, L. 1915; re-en. Sec. 7232, R. C. M. 1921; amd. Sec. 34, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted "(which may bear interest at a rate not to exceed six per centum per annum)" after "or by warrants" near the end of the first sentence of subsection (4); and made minor changes in style.

89-1804. (7235) **Annual tax levy—apportionment when tracts divided.** (1) and (2). * * * [Same as parent volume.]

(3) Whenever the board of commissioners has provided for the payment of any indebtedness of the district by levy of a special tax or assess-

ment, and thereafter makes provision for the payment of said indebtedness by the issuance of bonds, said board may cancel any portion or all of said levy theretofore made to raise funds to pay said indebtedness; and whenever said board has provided for the payment of any indebtedness of the district by the authorization of bonds and the levy of a special tax or assessment to pay the principal of and interest on said bonds, the [and] thereafter cancels said issue of bonds as provided for in section 89-1707 said board may cancel any portion or all of said levy theretofore made to raise funds to pay the principal of or interest on said bonds so canceled, and refund to the respective persons paying the same the funds, if any, in the custody of the county treasurer collected for the purpose of meeting the principal of and interest on such bonds so canceled.

(4) Any land or lands which may for any reason have escaped assessment in any previous year or years may be assessed or listed for the omitted years and omitted charges, in any subsequent year at the time of the making of the assessment in and for such subsequent year, but no such assessment shall be made later than three years after the occurrence of such omission.

History: En. Sec. 49, Ch. 146, L. 1909; amd. Sec. 16, Ch. 145, L. 1915; amd. Sec. 1, Ch. 148, L. 1921; re-en. Sec. 7235, R. C. M. 1921; amd. Sec. 19, Ch. 157, L. 1923; amd. Sec. 2, Ch. 135, L. 1961; amd. Sec. 1, Ch. 51, L. 1973.

Amendments

The 1973 amendment deleted subdivision (3) and renumbered former subdivisions (4) and (5) as subdivisions (3) and (4).

89-1811. (7239) County treasurer as custodian of district funds. The county treasurer of the county wherein the office of an irrigation district is located shall be the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except as to payments on bonds and interest, for which no order shall be necessary. Where any portion of the funds belonging to a district have been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners, who shall have authority to invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to section 89-1809 are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess, or any part thereof, may, upon order of the district's board of commissioners, and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board, and shall bear the official seal of the district.

History: En. Sec. 53, Ch. 146, L. 1909; amd. Sec. 18, Ch. 145, L. 1915; re-en. Sec. 7239, R. C. M. 1921; amd. Sec. 1, Ch. 137, L. 1971.

Compiler's Notes

The reference to section 89-1809 appearing in the third sentence of this section is apparently erroneous. The probable intent was to refer to subdivision (3) of section 89-1801.

Amendments

The 1971 amendment divided the former first sentence into the present first and fourth sentences; deleted "and payments under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States, as in section 89-1301 provided" before "for which no order shall be necessary" at the end of the first sentence; inserted new second and third sentences; deleted a final sentence reading "Where such orders are for the payment of money for construction work, the same shall be accompanied by and attached to the written estimate of the engineer in charge of such construction work"; and made minor changes in phaseology.

89-1812. (7240) **Collection of taxes or assessment.** On or before the third Monday in August of each year the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situate, a correct list of all the district lands in such county, together with the amount of the total taxes or assessments against said lands for district purposes. The agent of the department of revenue in each county shall immediately thereafter cause said assessment roll to be entered in the assessment book of said county for each year, and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments in the same manner and at the same time as county and state taxes.

History: En. Sec. 54, Ch. 146, L. 1909; amd. Sec. 2, Ch. 96, L. 1919; re-en. Sec. 7240, R. C. M. 1921; amd. Sec. 1, Ch. 14, L. 1945; amd. Sec. 65, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-1832. (7250) **Sale or transfer of lands.**

Highway Condemnation

State highway commission acquiring land for highway purposes is not liable for assessment and taxes by irrigation district since land taken will no longer benefit from services provided by district, notwithstanding contention of district that takings so reduced total irrigable acreage of district as to increase per-acre cost of operation and maintenance of remainder. Helena Valley Irrig. Dist. v. State Highway Commission, 150 M 192, 433 P 2d 791.

CHAPTER 21—IRRIGATION DISTRICTS—APPEALS—MISCELLANEOUS PROVISIONS

Section 89-2107. Records—inspection—fees—reports.

89-2107. (7260) **Records—inspection—fees—reports.** (1) and (2). * * * [Same as parent volume.]

(3) It shall be the duty of the board of commissioners to file with the county clerk and recorder of the county in which the district is located, annually, within ten (10) days from and after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount expended during said time, and shall cause said report to be published at least once in the official newspaper of such county.

(4) It shall be the duty of the state examiner or his representative to notify the secretaries of such districts of the time of presenting the books and records at the courthouse for examination.

(5) The costs incurred by the state examiner and his assistants in conducting the examinations of irrigation districts shall be reimbursed to the state at the rate of seventy dollars ($70) per day for each person engaged in an examination, and the moneys shall be paid at the conclusion of the examination to the state treasurer who shall credit such payment to the general fund of the state.

History: En. Sec. 65, Ch. 146, L. 1909; amd. Sec. 21, Ch. 145, L. 1915; amd. Sec. 1, Ch. 212, L. 1921; re-en. Sec. 7260, R. C. M. 1921; amd. Sec. 2, Ch. 195, L. 1945; amd. Sec. 4, Ch. 256, L. 1971.

Amendments

The 1971 amendment added subsections (4) and (5) and made a minor change in style.

Cross-References

State examiner's functions transferred, sec. 82A-903(3)(s).

CHAPTER 23—DRAINAGE DISTRICTS—COMMISSIONERS—ELECTION—ORGANIZATION—REPORTS

Section 89-2330. Report as to assessments.
89-2330.1. Taxpayers' approval required for assessments on improvements.
89-2330.2. Improvements not assessable by districts created for drainage only.
89-2332. Report as to assessments against lots and corporations.
89-2333. Report as to special benefits to corporations.
89-2334. Apportionment of costs of construction.
89-2337. Commissioners to use most feasible plan—alteration by court.
89-2338. Extension or reduction of boundaries—alteration by court.
89-2348. Assessments for construction—annual installment.

89-2330. (7307) **Report as to assessments.** Fourth. What lands, (including improvements when improvements receive benefits) easements, irrigation ditches, cities, towns, counties, individuals and other corporations and persons should be assessed for the payment of any part of the cost of constructing the proposed drains, levees or other facilities, repairs thereto, maintenance thereof and the incidental expenses attached to the establishment of such drainage district. In apportioning such costs and expenses, the following principles shall be regarded and the following classes of property, persons, corporations and municipalities shall be assessed:

All lands which are swampy, bogged or waterlogged, and will be relieved and improved by virtue of the construction of the proposed drainage system;

All lands which are becoming, or are liable to become swampy, bogged, or waterlogged, and which the construction of the proposed drainage system will prevent from being thus affected;

All lands from which surface or seepage waters will enter or can be conducted into the proposed drainage system;

All lands and improvements thereto upon which or through which, surface or seepage water will be prevented from flowing, or can be prevented from flowing, by virtue of the construction of the proposed drainage system;

All lands or improvements which will sustain any direct benefit of any kind or character whatsoever;

All railways, whether operated by steam, electricity or otherwise, whose right of way or roadbed will be benefited or can be benefited by reason of the construction of the proposed drainage system, or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work;

All owners of irrigation ditches or canals included within said district or from which water seeps, drains or wastes to, upon or through lands included within the said district;

The county or counties which the proposed drainage system traverses, or which will be benefited as to public health, convenience, welfare or improvement of any public highway;

All incorporated cities or towns, and lands included within townsites and subdivisions, in whole or in part, directly benefited by reason of the construction of the proposed drainage system;

All of the above classes of lands, improvements, railways, public utilities, irrigation ditches, counties, cities, towns, townsites and subdivisions shall be liable to assessment for the construction of the proposed drainage system in such proportions as may seem just and equitable.

The benefits to accrue from the construction of the proposed drainage system, to a railway, county, incorporated city or town, and lands included within a platted townsite or subdivision being of a different character than those to accrue to agricultural lands shall be considered in apportioning the assessment, and also, the damages and inconvenience caused by seepage and waste waters from irrigation ditches and from the higher lands, shall be considered in apportioning the assessment to them.

Provided that in the case of the construction of levees or other flood control facilities, lands and improvements which are located or constructed at an elevation which is greater than the elevation of the design flood level which said levees or other flood control facilities are designed to protect against shall not be assessed for the payment of any part of the cost of constructing the levees or other flood control facilities nor shall such lands or improvements be assessed for the payment of any part of the cost for repairs thereto, maintenance thereof nor the incidental expenses attached to the establishment of such drainage district.

The assessment against each tract, lot, easement, town, city, county, irrigation ditch, railroad, public utility, individual or corporation owner thereof which will be benefited by the proposed work or which, in any manner, contributes to the swamped, seeped, bogged or waterlogged condition of any land within said district and the proportionate share of cost of construction of the proposed drainage system, which each of them should bear shall be shown in tabular form, the columns of which shall be headed as follows: Column 1—Owners of property assessed; 2—Description of property assessed; 3—Number of acres assessed; 4—Amount of benefits assessed; 5—Number of acres taken for right of way; 6—Value of property taken; 7—Damages; 8—Assessment for costs; which shall be known as the assessment roll. Where property, persons or corporations, public or private, contribute to the damaged condition of the lands to be

reclaimed, it shall not be necessary to assess in such assessment roll the benefits to be derived by or accruing to them.

History: En. Sec. 43, Ch. 129, L. 1921; re-en. Sec. 7307, R. C. M. 1921; amd. Sec. 2, Ch. 169, L. 1929; amd. Sec. 1, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase near the beginning of the first sentence; inserted "levees or other facilities" in the first sentence; inserted "and improvements thereto" in the clause relating to land over which surface or seepage water will be prevented from flowing; inserted "or improvements" in the clause relating to lands which will sustain direct benefit; added "or levee project, and all public utilities whose easements or other facilities within the district will receive benefit from the proposed work" at the end of the clause relating to railways; inserted "improvements" and "public utilities" in the clause relating to lands liable to assessment; inserted the paragraph constituting a proviso; and inserted "public utility" near the beginning of the final paragraph.

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within district's exterior boundaries, which were owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in — M —, 496 P 2d 1143, 1151.

DECISIONS UNDER FORMER LAW

Improvements

Special assessments for flood control purposes are limited to land exclusive of improvements. In re West Great Falls Flood Control & Drainage Dist., — M —, 496 P 2d 1143. (Decision prior to 1973 amendment).

89-2330.1. Taxpayers' approval required for assessments on improvements. It shall require a vote of the persons on the assessment rolls in any existing district to make this law applicable to such districts. Such election shall be held in the same manner as prescribed for drainage district elections in Title 89, chapter 23.

History: En. Sec. 10, Ch. 409, L. 1973.

Title of Act

An act to amend the statutes relating to the creation and operation of drainage districts in the state of Montana, and their adaptation to flood control projects, as contained in sections 89-2201 through 89-2825, R. C. M. 1947, so as to provide that when benefits of such projects are received by improvements to land, or facilities or structures placed on or in land, the benefits so received may be subject to assessment for district costs of the project; amending section 89-2330 to include improvements, facilities and structures as subject to assessment and clarifying the inclusion of public utilities in the payment of assessments; amending sections 89-2332, 89-2333, 89-2334, 89-2337, 89-2338, 89-2405, and 89-2410, R. C. M. 1947, so as to include improvements; and providing an effective date.

89-2330.2. Improvements not assessable by districts created for drainage only. Nothing in this act confers upon districts created for drainage purposes only the authority to levy assessments on benefits to improvements.

History: En. Sec. 11, Ch. 409, L. 1973.

Effective Date

Section 12 of Ch. 409, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 21, 1973.

89-2332. (7309) **Report as to assessments against lots and corporations.** If the cost of construction of any particular part of the work so proposed to be done should be assessed upon any particular tract or tracts,

lot or lots of land, including improvements where the same are benefited, or upon any corporation or corporations, the commissioners shall so specify, and in their report they shall fix and determine the sums which should be assessed against said tracts, lots, and corporations, and assess such sum against said tracts, lots, and corporations.

History: En. Sec. 45, Ch. 129, L. 1921; re-en. Sec. 7309, R. C. M. 1921; amd. Sec. 2, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements where the same are benefited."

89-2333. (7310) Report as to special benefits to corporations. And if any individual, association of individuals or corporation would, in the judgment of said commissioners, derive special benefits from the whole or any part of such proposed work, the commissioners shall so report and assess those benefits and assess against the recipient thereof its proportionate share of the costs of said proposed work. The word "corporation," whenever in this act contained, shall be construed to include:

1 to 7. * * * [Same as parent volume.]

History: En. Sec. 46, Ch. 129, L. 1921; re-en. Sec. 7310, R. C. M. 1921; amd. Sec. 3, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "individual, association of individuals or" near the beginning of the first sentence; and substituted "the recipient thereof" for "the same" near the end of the first sentence.

89-2334. (7311) Apportionment of costs of construction. They shall apportion and assess the part of this "cost of construction," not assessed as above, against the several benefited tracts, lots, (including improvements when the same are benefited) and easements in said drainage district, in proportion to the benefits which they have assessed against the same, by setting down opposite each tract, lot, or easement the sum which they assess against the same for construction. The assessments which together make up the cost of construction, as above defined, are herein referred to as "assessments for construction."

History: En. Sec. 47, Ch. 129, L. 1921; re-en. Sec. 7311, R. C. M. 1921; amd. Sec. 4, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "(including improvements when the same are benefited)."

89-2337. (7314) Commissioners to use most feasible plan—alteration by court. The commissioners shall not be confined to the points of commencement, routes, or termini of the drains or ditches, or the number, extent, or size of the same, or the location, plan, or extent of any levee, ditch, or other work, as proposed by the petitioners, but shall locate, design, lay out, and plan the same in such manner as to them shall seem best, to promote the public health or welfare, and to drain, or to protect the lands, including improvements, of the parties interested with the least damage and the greatest benefit to all lands affected thereby. And any plan proposed by the commissioners may, on the application of any person interested, on the hearing hereinafter provided for, or on the application

of the commissioners, be altered by the court, by written order, in such manner as shall appear to the court to be just.

History: En. Sec. 50, Ch. 129, L. 1921; re-en. Sec. 7314, R. C. M. 1921; amd. Sec. 5, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted "including improvements" following "or to protect the lands" near the end of the first sentence.

89-2338. (7315) **Extension or reduction of boundaries—alteration by court.** If the commissioners find that the proposed district, as described in the petition filed, will not embrace all of the lands, including improvements, that will be benefited by the proposed work, or that it will include lands that will not be benefited and are not necessary to be included in said district for any purpose, they shall extend or contract the boundaries of the proposed district so as to include or exclude all such lands, or improvements, as the case may be; and the boundaries adopted and reported by them may, upon the hearing of their report, as hereinafter provided, upon their application, or that of any person interested, be altered by the court in such manner as shall appear to be just; provided, that the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district as to render such petition void or dismissable. Said report shall be filed with the clerk of the court.

History: En. Sec. 51, Ch. 129, L. 1921; re-en. Sec. 7315, R. C. M. 1921; amd. Sec. 6, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the references to improvements in the first sentence.

89-2348. (7325) **Assessments for construction—annual installment.** At the time of the confirmation of such assessments, it shall be competent for the court to order the assessment for construction of new work, to be paid in not more than fifteen (15) annual installments, of such amounts and at such times as will be convenient for the accomplishment of the proposed work, or for the payment of the principal and interest of such notes or bonds of said district, as the court shall grant authority to issue, for the construction of new work. The court shall also, by such order, fix a date on which the first installment of the assessments for construction shall become due, not more than five (5) years after the date of the order, and each of said installments shall draw interest at the rate fixed by the court in accordance with law from the date of said order.

History: En. Sec. 61, Ch. 129, L. 1921; re-en. Sec. 7325, R. C. M. 1921; amd. Sec. 35, Ch. 234, L. 1971.

Amendments

The 1971 amendment substituted "fixed by the court in accordance with law" for "of seven per cent per annum" near the end of the section; and made a minor change in style.

89-2349. (7326) **Lien of assessments—payments of assessments, etc.**

Highway Commission Property

Flood control district could assess property and improvements consisting of graded land, drainage culverts, highway bridges, roadbeds, and pavement, within exterior boundaries of district, which were owned or under lease by state highway commission. State Highway Commission v. West Great Falls Flood Control & Drainage District, 155 M 157, 468 P 2d 753, explained in — M —, 496 P 2d 1143, 1151.

CHAPTER 24—DRAINAGE DISTRICTS—TAXES AND ASSESSMENTS

Section 89-2401. District taxes—how certified and collected.
89-2405. Procedure on failure to certify assessments.
89-2410. Additional assessments, procedure to levy.

89-2401. (7329) **District taxes—How certified and collected.** On or before the third Monday in August of each year the commissioners shall certify to the agent of the department of revenue in each county wherein the lands of the district are situate, a correct list of all the district lands in such county and the owners thereof, together with a statement of the amount of the total tax or assessment against said lands for district purposes for that year. The agent of the department of revenue in each county shall immediately thereupon cause said assessment roll to be entered in the assessment book of said county for each year and prior to the delivery of the assessment book to the county treasurer. The county treasurer of each county shall collect such taxes or assessments at the same time and in the same manner as county and state taxes.

History: En. Sec. 65, Ch. 129, L. 1921; re-en. Sec. 7329, R. C. M. 1921; amd. Sec. 1, Ch. 12, L. 1945; amd. Sec. 66, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue in" for "county assessor of" in two places in order to implement article VIII, section 3 of the 1972 constitution.

89-2405. (7333) **Procedure on failure to certify assessments.** When commissioners shall fail to certify to the county treasurer of the proper county any one or more drainage assessments for construction or repair, or additional assessment against any lands (including improvements where benefited) in said district, at the proper time, they may certify the same to the county treasurer at any time thereafter, whether in the same or any subsequent year.

History: En. Sec. 69, Ch. 129, L. 1921; re-en. Sec. 7333, R. C. M. 1921; amd. Sec. 7, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements benefited.

89-2410. (7338) **Additional assessments, procedure to levy.** If in the first assessment for construction the commissioners shall have reported to the court a smaller sum than is needed to complete the work of construction, or if in any year an additional sum is necessary to pay the lawful indebtedness of said drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited, proportioned on the last assessment of benefits which has been approved by the court, shall be made by the commissioners of said drainage district under the order of the court or presiding judge thereof; provided, however, that the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, shall, in no event, exceed the total assessments of benefits as provided in section 89-2330. Notice of the hearing of the application for such additional assessment shall be published at least once each week for three consecutive weeks in one newspaper published

in each county in which said lands, or any part thereof, within said district are situated; which further or additional assessment may be made payable in installments as specified in section 89-2348, and shall be treated and collected in the same manner as the original assessments for construction confirmed by the court in said drainage district.

History: En. Sec. 74, Ch. 129, L. 1921; re-en. Sec. 7338, R. C. M. 1921; amd. Sec. 8, Ch. 409, L. 1973.

Amendments

The 1973 amendment inserted the parenthetical phrase relating to improvements.

Separability Clause

Section 9 of Ch. 409, Laws 1973 read "The provisions of this act shall be severable, and if any of its provisions, sections, or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

CHAPTER 25—DRAINAGE DISTRICTS—BONDS—REFUNDING INDEBTEDNESS

Section 89-2501. Borrowing money—procedure to issue notes or bonds.
89-2502. Refunding indebtedness of district.

89-2501. (7343) **Borrowing money — procedure to issue notes or bonds.** (1) The commissioners may borrow money not exceeding the amount of assessment for the cost of construction and additional assessments, as provided in section 89-2350, unpaid at the time of borrowing, for the construction or repair of any work which they shall be authorized to construct or repair, or for the payment of any indebtedness which they may have lawfully incurred, and may issue notes or negotiable coupon bonds on the district, bearing interest, payable semiannually and not running beyond one (1) year after the payment of the last installment of the assessment, on account of which money is borrowed, shall fall due.

(2) Before the issuance of said notes or bonds, the commissioners shall pass a resolution providing for the issuance of such notes or bonds, which said resolution shall fix the rate of interest which said notes or bonds shall bear, the time of payment and, if redeemable before maturity, the date thereof, and shall prescribe the denominations, not exceeding one thousand dollars ($1,000), and form thereof, and may provide that both the principal and interest of said notes and bonds shall be payable at some convenient banking house, or trust company's office, to be named in said notes or bonds; such notes or bonds, and the coupons attached thereto, shall bear the signatures of the president and the secretary of the drainage district; and the corporate seal of the drainage district shall be affixed to each of the notes or bonds.

(3) Upon execution, the notes or bonds shall be deposited with the county treasurer, who shall register the same in a book for that purpose, which shall show the number and amount of each note or bond, its date, the date payable and redeemable, where payable, the person to whom issued, and upon sale of the said notes or bonds, the county treasurer shall deliver the same to the person or persons to whom sold, upon their making payment for the same; said notes or bonds may be sold by the commissioners at either public or private sale, either with or without

advertisement as they may deem it to the best interests of the district; said notes or bonds shall not be sold at less than ninety per cent (90%) of their face value; said notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds.

(4). * * * [Same as parent volume.]

History: En. Sec. 79, Ch. 129, L. 1921; re-en. Sec. 7343, R. C. M. 1921; amd. Sec. 13, Ch. 260, L. 1959; amd. Sec. 36, Ch. 234, L. 1971.

Amendments

The 1971 amendment, deleted "at a rate not to exceed six per centum per annum" after "bearing interest" in the latter part of subsection (1); deleted "not exceeding six per centum per annum, payable semi-annually" after "interest which said notes or bonds shall bear" near the beginning of subsection (2); and made minor changes in style.

89-2502. (7344) **Refunding indebtedness of district.** And the court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district by taking up and canceling all of its outstanding notes and bonds, as fast as they become due, or before, if the holders thereof will surrender the same, and issuing in lieu thereof new notes or bonds of such district, payable in such longer time as the court shall deem proper, not to exceed in the aggregate the amount of all notes and bonds of the district then outstanding, and the unpaid accrued interest thereon.

History: En. Sec. 80, Ch. 129, L. 1921; re-en. Sec. 7344, R. C. M. 1921; amd. Sec. 42, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the section "and bearing interest not exceeding six per cent per annum."

CHAPTER 29—APPROPRIATION AND REGULATION OF GROUND WATER

Section 89-2911. Definitions.
89-2915. Limiting withdrawals—hearing and order.
89-2917. Scope of administrative hearing.
89-2918. Permit required to appropriate in controlled area.
89-2928.1. Well logs.
89-2934.1. Hearings before board—Administrative Procedure Act.

89-2911. **Definitions.** Unless the context requires otherwise, in this chapter:

(a) "Ground water" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir or other body of surface water, and which is not a part of that surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water area or subarea of the state.

(b) and (c). * * * [Same as parent volume.]

(d) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including, but not limited to,

agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

(e) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, and the United States or any agency thereof.

(f) "Administrator" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(g). * * * [Same as parent volume.]

(h) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

History: En. Sec. 1, Ch. 237, L. 1961; amd. Sec. 16, Ch. 280, L. 1965; amd. Sec. 1, Ch. 307, L. 1971; amd. Sec. 40, Ch. 452, L. 1973.

Amendments

The 1965 amendment substituted "state water conservation board" for "state engineer" in paragraph (f).

The 1971 amendment substituted "Montana water resources board" for "state water conservation board" in subdivision (f); added a subdivision (h) defining "notice of appropriation," a subdivision (i) defining "notice of completion" and a subdivision (j) defining "declaration of vested ground water rights"; and made minor changes in punctuation and phraseology.

The 1973 amendment inserted "Unless the context requires otherwise" at the beginning of the section; deleted "or regulations issued hereunder" from the end of the preliminary clause; inserted "and which is not a part of that surface water" at the end of the first sentence in subdivision (a); substituted subdivision (d) for a subdivision defining "beneficial use" as "any economically or socially justifiable withdrawal or utilization of water"; substituted "an individual" for "any natural person" in subdivision (e); substituted "state agency, political subdivision" in subdivision (e) for "municipality, irrigation district, the state of Montana or any political subdivision or agency thereof"; substituted subdivision (f) for a subdivision defining "administrator" as "the Montana water resources board"; deleted the subdivisions (h), (i) and (j) added by the 1971 amendment; added a new subdivision (h); and made minor changes in phraseology.

89-2912, 89-2913. Repealed.

Repeal

Sections 89-2912, 89-2913 (Secs. 2, 3, Ch. 237, L. 1961; Sec. 1, Ch. 21, L. 1965; Sec. 2, Ch. 307, L. 1971), relating to appropriations of ground water, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-880 to 89-888.

89-2915. Limiting withdrawals—hearing and order. (1) At the time set for the hearing the board, if it is satisfied that the notice of hearing has been duly published and mailed as required by section 89-2914, shall proceed to hear evidence and may consider information which the administrator has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the board finds on the basis of the hearing and other information obtained by the administrator that the withdrawal of ground water in such area or subarea exceeds the safe annual yield of ground water as measured by the recharge of the area or subarea, it shall order the aggregate withdrawal of ground water from such area or subarea decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The administrator shall have the authority to enforce the order; to require persons to cease such excessive withdrawals in reverse order of their priority of rights; and to bring an action for an

injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

(2) The order of the board shall be published and mailed by the administrator in the manner and for the length of time as prescribed by section 89-2914 for the publication and mailing of the notice of hearing except that a copy of the written findings of the board shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken.

(3) Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or subarea, as provided in this section, the board shall have authority after notice and hearing as heretofore provided in this section, to modify or revoke its order upon a showing by any interested party and a finding by the board that conditions have materially changed since the prior order. While a matter is pending before the board, the administrator shall have discretion and authority to restrict further development of the subarea.

History: En. Sec. 5, Ch. 237, L. 1961; amd. Sec. 41, Ch. 452, L. 1973.

Amendments

The 1973 amendment numbered the subsections; substituted references to the board for references to the administrator in relation to quasi-legislative functions; inserted "on the basis of the hearing and other information obtained by the administrator" near the beginning of the second sentence in subsection (1); and deleted "within the time and in the manner prescribed in section 89-2920" from the end of subsection (2).

89-2917. Scope of administrative hearing. (1) In any hearing for the ascertainment and finding of priorities to the use of ground water, the administrator in its finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or subarea involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, shall be entitled in such particular ground water area or subarea, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. It may also determine the level below which the ground water shall not be drawn by appropriators. The administrator shall act in administering and enforcing the provisions of the order, as provided in section 89-2915.

(2) A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or subarea is located. If the order is not appealed, the order of the administrator shall be final and conclusive when it is published and mailed as provided for orders issued under section 89-2915.

History: En. Sec. 7, Ch. 237, L. 1961; amd. Sec. 42, Ch. 452, L. 1973.

Amendments

The 1973 amendment numbered the subsections; deleted "within the time limit and otherwise as is provided in section 89-2920" following "If the order is not appealed" in the second sentence of subsection (2); and made minor changes in phraseology.

89-2918. Permit required to appropriate in controlled area. A person may appropriate ground water in a controlled area only by applying for and receiving a permit from the administrator in accordance with the Montana Water Use Act. The administrator shall not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments).

History: En. Sec. 8, Ch. 237, L. 1961; amd. Sec. 43, Ch. 452, L. 1973.

Amendments

The 1973 amendment substituted the first sentence for six sentences requiring a permit to appropriate ground water in a controlled area and prescribing the procedure for issuance of a permit. For prior law, see parent volume.

89-2919 to 89-2925. Repealed.

Repeal

Sections 89-2919 to 89-2925 (Secs. 9 to 15, Ch. 237, L. 1961), relating to hearings and appeals and to change of location or abandonment, were repealed by Sec. 46, Ch. 452, Laws 1973. For new law, see secs. 89-892, 89-894 and 89-2934.1.

89-2926. Waste and contamination of ground water prohibited, etc.

Sealing "Shot" Hole

Sealing "shot" holes by pouring excess cuttings down into the holes and plugging the orifices by forcing an aluminum plug into the holes so that the tops of the plugs were below plow depth, did not violate this section when the holes were only four and one-half inches in diameter and expert testimony indicated that seismographic holes tended to slough, cave and release lateral support from materials around the hole causing pressure from the weight of the earth above to force the material towards the center, sealing the hole. Haynie v. Northern Pacific Ry. Co., 158 M 247, 490 P 2d 715.

89-2928.1. Well logs. Within sixty (60) days after any well is completed, the driller shall file with the administrator a well log report on a form provided by the administrator at its offices and at the offices of the county clerks and recorders. The administrator may return the report for refiling if it is incomplete or incorrect. The administrator shall provide a copy of the complete and correct well log to the Montana bureau of mines and geology.

History: En. 89-2928.1 by Sec. 44, Ch. 452, L. 1973.

89-2934.1. Hearings before board—Administrative Procedure Act. (1) A person who is aggrieved by a final decision of the administrator under this chapter, is entitled to a hearing before the board.

(2) The Montana Administrative Procedure Act [82-4201 to 82-4225] governs administrative proceedings under this chapter.

History: En. 89-2934.1 by Sec. 45, Ch. 452, L. 1973.

Repealing Clause

Section 46 of Ch. 452, Laws 1973 read "Sections 89-121 through 89-123, 89-801 through 89-804, 89-807 through 89-816, 89-829 through 89-842, 89-844 and 89-845, 89-847 through 89-855, 89-857 through 89-864, 89-2912, 89-2913, 89-2919 through 89-2925, 89-2935, R. C. M. 1947, are repealed."

Separability Clause

Section 47 of Ch. 452, Laws 1973 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this

act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

89-2935. Repealed.

Repeal

Section 89-2935 (Sec. 25, Ch. 237, L. 1961), relating to filing fees, was repealed by Sec. 46, Ch. 452, Laws 1973.

CHAPTER 33—COUNTY AND MUNICIPAL PARTICIPATION IN FLOOD CONTROL AND WATER CONSERVATION

Section 89-3301. Participation in projects authorized—work which may be undertaken.
89-3302. Water conservation and flood control activities declared public purpose.
89-3303. Acquisition of property—condemnation.
89-3304. Acceptance of aid—assumption of remaining cost.
89-3305. Right of way and construction costs.
89-3306. Direction of project.
89-3307. Contributions to right of way costs—agreement to maintain works.
89-3308. Street or road fund used.
89-3309. Levy of special assessment—apportionment to property benefited.
89-3309.1. Charges to be levied.
89-3310. Contracts for use of railroads and highways.
89-3311. Division of work into parts—separate proceedings for parts.
89-3312. Indebtedness and bonds—bond election—special assessment to pay indebtedness.
89-3313. Powers additional.
89-3314. Provisions to provide alternative method.

89-3301. Participation in projects authorized—work which may be undertaken. Cities, towns or counties, through their councils, boards of county commissioners, or other governing body, are hereby empowered, either individually or jointly, to engage or participate in the establishment of water conservation and flood control projects within the limits of such city, town or county for the protection or reclamation of property situated therein from floods or high waters and to protect property therein from the effects of flood water, and for the conservation, development, storage, distribution, drainage and utilization of water for purposes beneficial to the district, such purposes to include but not be limited to industrial and municipal water supply, recreation and wildlife, irrigation, streamflow stabilization, household and domestic use and pollution abatement, whenever the establishment of such a water conservation and flood control system shall, in the judgment of the city council, board of county commissioners or other governing body, be conducive to public convenience and welfare. Such cities, towns or counties may in accordance with the provisions of this act individually, jointly or severally, or in co-operation with the federal or state government or any department or agency thereof, and with each other, deepen, widen, straighten, alter, change, divert or otherwise improve the watercourses within or without their limits, by constructing levees, dikes, embankments, structures, impounding reservoirs or conduits, and improve, widen and establish streets, alleys and boulevards across and adjacent to the abandoned or new channel or conduit and provide for the payment of the cost and maintenance of such project or projects under the terms of this act. The boundaries of a project once

established shall not be extended without the vote of a majority of the electors residing in the area proposed to be annexed. Such electors to be determined and such election to be held in accordance with the provisions of section 89-3312 of this act.

History: En. Sec. 1, Ch. 272, L. 1965; amd. Sec. 1, Ch. 284, L. 1967.

Title of Act

An act authorizing cities, towns or counties to participate in flood control or flood prevention projects, to acquire property for such purpose, to accept federal aid for such purpose, providing for division of expenses in connection with such purpose, providing for assessments, permitting the cities, towns or counties to enter into certain contracts in pursuance of such purpose, authorizing the issuance of general obligation bonds for such purpose upon an election thereon, authorizing the state water conservation board to co-ordinate such activities when two or more counties are involved and for that purpose appropriating to the state water conservation board the sum of one dollar ($1) from the general fund of the state of Montana for the biennium commencing July 1, 1965, containing a repealing clause and containing a savings clause.

Amendments

The 1967 amendment substituted "water conservation and flood control projects" for "a flood control or flood prevention project" after "establishment of" in the first sentence, inserted "and for the conservation, development, * * * pollution abatement" before "whenever" and inserted "water conservation and" after "such a"; inserted "or state" after "federal" in the second sentence, substituted "such project or projects" for "such flood control project" before "under the terms" near the end of the second sentence and added the last sentence.

89-3302. Water conservation and flood control activities declared public purpose. Such water conservation and flood control activities, their establishment, construction, operation and maintenance as authorized by this act are declared to be for the protection of the tax base of the city, town or county, for the protection of public roads, lands and improvements, and for the protection of the public health, sanitation, safety and for improvement of the general welfare.

History: En. Sec. 2, Ch. 272, L. 1965; amd. Sec. 2, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" after "Such" at the beginning of the section and inserted "for improvement of the" before "general welfare" at the end of the section.

89-3303. Acquisition of property—condemnation. Cities, towns and counties may acquire by gift, purchase or condemn and appropriate private property within the limits of the project, including the right to cross railroad right of way and property and highway right of way and property, so as not to impair the previous public use, as may be necessary to carry into effect the provisions of this act, and to provide an outlet for the watercourses, either natural or artificial, which may be deepened, widened, straightened, altered, changed, diverted or otherwise improved under the provisions of this act. All provisions of the laws of the state of Montana relating to the condemnation of lands for public purposes shall apply to the provisions thereof in and so far as applicable.

History: En. Sec. 3, Ch. 272, L. 1965; amd. Sec. 3, Ch. 284, L. 1967.

Amendments

The 1967 amendment deleted "flood control" before "project."

89-3304. Acceptance of aid—assumption of remaining cost. Cities, towns and counties may in accordance with the provisions of this act accept funds and property or other assistance, financial or otherwise, from federal, state and other public or private sources for the purpose of aiding the construction and maintenance of water conservation and flood control projects; and co-operate and contract with the state or federal government, or any department or agency thereof, in furnishing assurances and meeting local co-operation requirements of any project involving control, conservation and use of water.

History: En. Sec. 4, Ch. 272, L. 1965; amd. Sec. 4, Ch. 284, L. 1967.

Amendments

The 1967 amendment substituted "funds and property or other assistance * * * and use of water" for "federal aid in the doing of the acts provided in sections 1 and 3 hereof, and may assume such portion of the cost thereof not discharged by such federal aid" after "this act accept."

89-3305. Right of way and construction costs. The cost of all right of way acquired by purchase or condemnation may be borne by the city, town or county together with any other property rights which may be required in furtherance of such projects, and the work of actual construction and the cost thereof may be borne by the federal government.

History: En. Sec. 5, Ch. 272, L. 1965.

89-3306. Direction of project. This act contemplates that the actual direction of the project and the doing of the work in connection therewith is assumed by either the state or the federal government and the city, town or county provides and assumes the cost of necessary right of way over and above such contributions in that regard as the federal government may choose to make. Under such limitation all appropriate portions of this act shall apply.

History: En. Sec. 6, Ch. 272, L. 1965; amd. Sec. 5, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "either the state or" after "assumed by."

89-3307. Contributions to right of way costs—agreement to maintain works. Cities, towns and counties in furtherance of such water conservation and flood control projects may accept contributions to enable them to pay for necessary right of way. They may also enter into agreement with the federal government to maintain levees, dikes, or other construction and to do all other acts required by the federal government in maintaining the work when completed.

History: En. Sec. 7, Ch. 272, L. 1965; amd. Sec. 6, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation and" before "flood control."

89-3308. Street or road fund used. The council, board or governing body shall have power to allocate a portion of the street or road fund, as the case may be, for the purpose of acquiring right of way or the operation and maintenance of completed projects.

History: En. Sec. 8, Ch. 272, L. 1965; amd. Sec. 7, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "operation and" before "maintenance"; and deleted "flood control" before "projects."

89-3309. Levy of special assessment—apportionment to property benefited. Any city, town or county that shall establish a water conservation or flood control system or both pursuant to this act may for the purpose of providing funds for the operation and maintenance thereof levy an annual special assessment against all real property in the area benefiting from such system. Such special assessment shall be levied against each lot or parcel of land in the benefited area for that portion of the money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the governing body of the city, town or county, as the case may be, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land exclusive of improvements thereon, within said benefited area, in which case each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided, however, that where the benefited area lies in more than one county or lies both within a county and also a city or town, the same method of assessment shall be used for each governing body. Such special assessments for the operation and maintenance of any system authorized by this act shall be levied as are other special improvement levies as required by law.

History: En. Sec. 9, Ch. 272, L. 1965; amd. Sec. 8, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; inserted "or both" before "pursuant"; substituted the present second and third sentences for former second sentence which read, "Such special assessment shall be apportioned among the several lots or parcels of real property in the benefited area in proportion to the benefit conferred"; and, in the last sentence deleted "flood control" before "system."

89-3309.1. Charges to be levied. Cities, towns and counties may for the purpose of providing funds for the operation and maintenance of completed projects, fix, maintain and collect fees, rents, tolls and other charges for services rendered or facilities provided. In fixing such rate, fee, toll or rent the governing body shall charge for water furnished for household use, domestic use, irrigation use, industrial use, municipal use and for water used for streamflow stabilization a fee sufficient to pay the proportionate share of the repairs, maintenance and operating expenses as such use bears in economic value, such economic value to be determined by the governing body, to the total economic value of the total use of said facilities of the project or projects. For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control and pollution abatement, the governing body shall determine a reasonable valuation or charge, which valuation or charge shall be certified by them to the county commissioners prior to the time general taxes are levied and assessed and it shall be the obligation of the county commissioners to levy a special assessment as provided for in section 89-3309 against such area or areas sufficient to provide revenues for the repairs, mainte-

nance and operating expenses of the project. For recreation use the governing body shall first determine the share of the costs of operation, repairs and depreciation to be charged against such uses, and from this figure shall subtract the estimated amount of fees and tolls collected for such uses; the deficiency, if any, shall be certified to the county commissioners in the same way as the charges for flood prevention, flood control, etc. and special assessments be levied by the county commissioners in the manner set out herein. The council, board of county commissioners or other governing body shall also have the authority to receive and accept appropriations and contributions from any source of either money or property or other things of value, to be held, used, and applied for the purposes in this act provided.

History: En. Sec. 9, Ch. 284, L. 1967.

Title of Act

An act amending sections 89-3301, 89-3302, 89-3303, 89-3304, 89-3306, 89-3307, 89-3308, 89-3309, 89-3310, 89-3311, R. C. M. 1947, relating to city and county flood control projects, to authorize multiple use water projects by cities and counties; to change the method of levying the special assessment to pay for such projects; authorizing cities and counties to charge fees for services and facilities provided by such projects; and providing an effective date.

89-3310. **Contracts for use of railroads and highways.** Any city, town or county may contract with any railroad company or with the state highway commission for the use of railroad or highway rights of way and embankments, and other railroad or highway property which can be utilized by such city, town or county for the purpose of water conservation or flood control or protection as part of its water conservation or flood control system, or both, for any period not exceeding ninety-nine (99) years.

History: En. Sec. 10, Ch. 272, L. 1965; amd. Sec. 10, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control" wherever found in this section; inserted "or both" before "for any period."

89-3311. **Division of work into parts—separate proceedings for parts.** Whenever any city, town or county has begun a water conservation or flood control system, or both, under this act, the council, board or other governing body shall have the power to divide the work into parts, sections or districts; to omit parts of said work and to contract for any part or section separately and proceed therewith the same as if the entire work or improvements were contracted for, done or made.

History: En. Sec. 11, Ch. 272, L. 1965; amd. Sec. 11, Ch. 284, L. 1967.

Amendments

The 1967 amendment inserted "water conservation or" before "flood control"; and inserted "or both" before "under this act."

89-3312. **Indebtedness and bonds—bond election—special assessment to pay indebtedness.** Cities, towns and counties are hereby authorized to contract indebtedness and to issue special improvement district or rural improvement district bonds to provide funds for the payment of the cost of

improvements contemplated by this act by following the following procedures:

The governing body of the city, town or county may call a special election to vote upon the proposition of issuing said bonds or may submit the proposition as a special question at a regular municipal or general election. The notice of the election and the election itself shall be carried out in accordance with sections 11-2201 through 11-2288, R. C. M. 1947, as amended, as to cities, and in accordance with sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to the counties.

Tax assessments for the payment of said bonds shall be levied in accordance with sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638, R. C. M. 1947, as amended, as to cities and counties, respectively.

History: En. Sec. 12, Ch. 272, L. 1965; amd. Sec. 1, Ch. 239, L. 1971.

Amendments

The 1971 amendment substituted "special improvement district or rural improvement district bonds" for "general obligation bonds" in the first paragraph; substituted "sections 11-2201 through 11-2288" for "11-2301 through 11-2330" in the second paragraph; substituted "sections 16-1601 through 16-1638" for "16-2002 through 16-2050" in the second paragraph; substituted "Tax assessments" for "Taxes" at the beginning of the third paragraph; substituted "sections 11-2201 through 11-2288 and sections 16-1601 through 16-1638" for "11-2301 through 11-2330 and sections 16-2002 through 16-2050" in the third paragraph; deleted the former second sentence of the third paragraph reading, "The indebtedness incurred for the purposes herein provided shall not be considered an indebtedness for general or ordinary purposes and shall not be charged against or counted as part of the levies available for general or ordinary purposes"; and made minor changes in style.

89-3313. Powers additional. This act, and each section thereof, shall be construed as granting additional power without limiting the power already existing in cities, towns and counties.

History: En. Sec. 13, Ch. 272, L. 1965.

Appropriation

Section 14 of Ch. 272, Laws 1965, appropriated $1.00 to the water conservation board from the general fund for the biennium commencing July 1, 1965.

Separability Clause

Section 15 of Ch. 272, Laws 1965 read "If a part of this act shall be declared to be invalid, all valid parts that are severable from the invalid parts remain in effect. If a part of this act is declared to be invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Repealing Clause

Section 16 of Ch. 272, Laws 1965 repealed all acts and parts of acts in conflict therewith.

89-3314. Provisions to provide alternative method. The provisions of this chapter and the methods of organization of water conservation and flood control projects are hereby declared to be an alternative method to any other method proposed by any law now in existence or hereafter enacted for the creation of such projects and it is hereby declared that no provision hereof shall be amended or repealed by implication or otherwise as being in conflict with any existing law or future enactment unless specifically so declared by the legislature.

History: En. Sec. 12, Ch. 284, L. 1967.

Effective Date

Section 13 of Ch. 284, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

CHAPTER 34—CONSERVANCY DISTRICTS

Section 89-3401. Organization of conservancy districts and construction of works a public use—benefits.
89-3402. Purpose of act.
89-3403. Definitions.
89-3404. Preliminary survey—petition.
89-3405. Action by water board upon receipt of request.
89-3406. Hearing by water board.
89-3407. Feasibility study and report—adjustment of proposed boundaries.
89-3408. Procedure for organization of district.
89-3409. Court hearing on organization petition—election—voters needed to organize—no jurisdiction to determine priority of appropriation.
89-3410. Filing of documents after organization.
89-3411. Reimbursement for expenses of organizing election.
89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond.
89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings.
89-3414. Powers of directors.
89-3415. Participation in federal programs.
89-3416. Assessments.
89-3417. Notice of public budget hearing.
89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts.
89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest.
89-3420. Condemnation authorized—water rights.
89-3421. Annual written report of directors' activities.
89-3422. State examiner to examine financial records—report—fee.
89-3423. Persons entitled to vote.
89-3424. Election procedures.
89-3425. Challenging voters—oath—penalty for false subscription.
89-3426. Issuance of bonds—maximum term—sale as single issue of multipurpose bonds.
89-3427. Determination of amount of bonds to be issued.
89-3428. Resolution for issuance of bonds—notice—election.
89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition.
89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids.
89-3431. Comparable to municipal bonds—exempt from taxation.
89-3432. Interim receipts—negotiability.
89-3433. Registration of bonds—copy to be furnished county treasurer.
89-3434. Deposit of sales proceeds—disposition—investment.
89-3435. Refunding bonds authorized—redemption.
89-3436. Fund for retirement of bonds—investment and disbursement.
89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer.
89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations.
89-3439. Procedure for annexing realty.
89-3440. Pre-annexation bonds not lien without prior agreement.
89-3441. Exclusion of territory from district—procedure.
89-3442. Procedure for dissolution of district.
89-3443. Dissolution election—majority approval required.
89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction.
89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments.
89-3446. Entry of dissolution order—certified copy.
89-3447. County general funds to receive funds remaining after dissolution—proportion.
89-3448. No power to generate, distribute or sell electric energy.
89-3449. Other agencies not affected.

89-3401. Organization of conservancy districts and construction of works a public use—benefits. To provide for the conservation and development of the water and land resources of the state of Montana, conserve Montana's water for utilization for beneficial purposes within the state, and provide for the greatest beneficial use of water within this state, the organization of conservancy districts and the construction of works as defined by the act are a public use and will:

(1) be essentially for the public benefit and advantage of the people of Montana;

(2) benefit all industries of the state;

(3) encourage economic growth;

(4) indirectly benefit the state by increasing property valuations;

(5) directly benefit municipalities by providing adequate supplies of water for domestic uses;

(6) directly benefit lands irrigated or drained by works constructed;

(7) directly benefit lands now irrigated by stabilizing the flow of water in streams and by increasing the flow and return flow of water to those streams;

(8) enhance fish and wildlife habitat;

(9) improve recreational facilities; and

(10) promote the comfort, safety, and welfare of the people of Montana.

History: En. Sec. 1, Ch. 100, L. 1969.

Title of Act
An act providing for the conservation and development of water and land resources of Montana through the creation of conservancy districts.

89-3402. Purpose of act. The purpose of this act is to enable the formation of conservancy districts, comprised of area in one or more counties to promote the following purposes:

(1) prevent and control floods, erosion and sedimentation;

(2) provide for regulation of stream flows and lake levels;

(3) improve drainage and to reclaim wet or overflowed lands;

(4) promote recreation;

(5) develop and conserve water resources and related lands, forest, fish and wildlife resources;

(6) further provide for the conservation, development, and utilization of land and water for beneficial uses including, but not limited to, domestic water supply, fish, industrial water supply, irrigation, livestock water supply, municipal water supply, recreation, and wildlife.

History: En. Sec. 2, Ch. 100, L. 1969.

89-3403. Definitions. As used in this act unless the context clearly indicates otherwise:

(1) "District" means a conservancy district, which is a public corporation and a political subdivision of the state.

(2) "Directors" means the board of directors of a conservancy district.

(3) "Elector" means a person qualified to vote under section 23 [89-3423] of this act.

(4) "Court" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district.

(5) "Person" means a natural person; firm; partnership; co-operative; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity.

(6) "Water board" means the state water resources board.

(7) "Board of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located.

(8) "Works" means all property, rights, easements, franchises, and other facilities including, but not limited to, land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution.

(9) "Cost of works" means the cost of construction, acquisition, improvement, extension and deveopment of works, incuding financing charges, interest and professional services.

(10) "Applicants" means any persons residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district.

(11) "Notice" means publication at least once each week for three (3) consecutive weeks in a newspaper published in each county, or if no newspaper is published in a county, a newspaper of general circulation in the county, or counties, in which a district is or will be located. The last published notice shall appear not less than five (5) days prior to any hearing or election held under this act.

(12) "Owners" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor shall he affect the previous title for purposes of this act.

(13) "Taxable valuation" shall mean the valuation determined according to section 84-302, R. C. M., 1947, and does not mean assessed valuation.

History: En. Sec. 3, Ch. 100, L. 1969.

89-3404. Preliminary survey—petition. (1) To request a preliminary survey for a proposed conservancy district, the applicants shall present a written petition to the department.

(2) The petition shall:

(a) be signed by at least ten per cent (10%) of the registered voters residing within the boundaries of the proposed conservancy district;

(b) generally describe the proposed boundaries of the district;

(c) specify the purpose or purposes of the district;

(d) list the works contemplated;

(e) request that a preliminary survey be initiated.

(3) The department may initiate a preliminary survey without any prior written petition.

History: En. Sec. 4, Ch. 100, L. 1969; amd. Sec. 1, Ch. 19, L. 1973.

Amendments

The 1973 amendment substituted "petition" for "request" throughout the section; substituted "department" for "water board" throughout the section; inserted a new subdivision (2)(a); redesignated former subdivisions (a), (b) and (c) of subdivision (2) as (b), (c) and (d); inserted a new subdivision (2)(e); and inserted "written" in subdivision (3).

89-3405. Action by water board upon receipt of request. (1) Sooner than eleven (11) days after the request is received, the water board shall acknowledge the request.

(2) The water board shall itself, or through co-operating agencies, or together with co-operating agencies:

(a) consult with the board of supervisors and all persons who may participate in the proposed project;

(b) conduct a preliminary survey of the proposed district;

(c) estimate costs of works, maintenance, and operation;

(d) determine sources of financing;

(e) reach a tentative decision on the feasibility, desirability and compatability with the state water plan of the proposed district;

(f) adjust the boundaries of the proposed district to improve the feasibility, desirability or consistency with the state water plan;

(g) sooner than one (1) year after receipt of the request, send a report of the preliminary survey to the applicants, the board of supervisors, fish and game commission, state soil conservation committee, state board of health, and other affected state and federal resource agencies for their comments.

History: En. Sec. 5, Ch. 100, L. 1969; amd. Sec. 1, Ch. 302, L. 1971.

Amendments

The 1971 amendment increased from six months to one year the time allowed by subdivision (2)(g) for the report of preliminary survey.

89-3406. Hearing by water board. (1) Upon receipt of the preliminary survey report the applicants, or any one of them, may request the

water board to hold a hearing. The water board shall hold the hearing sooner than sixty-one (61) days after receipt of the request. Notice of the hearing shall be given in accordance with section 3, subsection (11) [89-3403 (11)] of this act.

(2) If the water board itself initiated the preliminary survey, it may hold such a hearing without being requested to do so.

History: En. Sec. 6, Ch. 100, L. 1969.

89-3407. Feasibility study and report—adjustment of proposed boundaries. After the hearing, the applicants, or any one of them, may request the water board to prepare a detailed feasibility study of the proposed district. If the water board concludes that the proposed district is feasible, desirable, and consistent with the state water plan, it shall prepare a feasibility report, and sooner than one (1) year after receipt of the request, send copies to the applicants, if any, the fish and game commission, state soil conservation committee, state board of health, and other affected state and federal water resource agencies. For good cause shown based upon the actual technical problems in completing the report, the water board may use necessary additional time to complete and distribute the report. The detailed feasibility report shall describe the proposed works and contain an estimate of the cost of the works, the means of financing, and the estimated costs of operation and maintenance. The water board may adjust the boundaries of the proposed district to improve the feasibility, desirability and consistency with the state water plan, and to exclude land which would receive no direct or indirect benefits from the proposed district.

History: En. Sec. 7, Ch. 100, L. 1969; amd. Sec. 1, Ch. 303, L. 1971.

Amendments

The 1971 amendment increased the time allowed for the feasibility report by the second sentence from six months to one year.

89-3408. Procedure for organization of district. If in the opinion of the water board the feasibility study shows that a district is feasible and consistent with the state water plan, the procedure for organization is:

(1) the water board shall file a petition requesting organization with the court;

(2) the petition shall:

(a) state the name of the proposed district;

(b) give a legal description of the boundaries of the proposed district, excluding therefrom lands which would receive no direct or indirect benefits from the proposed district;

(c) describe the purposes of the district;

(d) describe the works;

(e) indicate the estimated cost of works, means of financing, and estimated costs of operation and maintenance;

(f) list the taxable valuation of real property in the proposed district, which must be one hundred thousand dollars ($100,000) or more;

(g) describe the means of repaying capital costs;

(h) propose the persons who should be represented and the number of directors.

(3) The petition shall be signed by owners of at least fifty-one per cent (51%) of the land outside the limits of an incorporated municipality, and not fewer than five per cent (5%) or one hundred (100), whichever is the lesser, of the persons who would qualify as electors within an incorporated municipality.

History: En. Sec. 8, Ch. 100, L. 1969.

89-3409. Court hearing on organization petition — election — voters needed to organize—no jurisdiction to determine priority of appropriation. (1) Upon receipt of a petition for organizing a district, the court shall give notice and hold a hearing on the petition. If the courts shall find that the prayer of the petition should be granted, it shall:

(a) make and file findings of fact specifying those lands that will be directly or indirectly benefited by the proposed district, and exclude those lands which will not be so benefited;

(b) make an order fixing the time and place of an organizing election;

(c) give notice of an election in the way provided in section 3, subsection (11) [89-3403 (11)];

(d) provide for election judges and fix their compensation;

(e) fix the polling place or places as necessary;

(f) order the county clerk to provide pollbooks, ballots, poll lists and other necessary election supplies;

(g) provide for canvassing the results;

(h) declare the results;

(i) order and decree the district organized if the requisite number of eligible electors vote in favor of organization.

(2) In order for the district to be organized, fifty-one per cent (51%) or more of the eligible electors must vote in the election, and a majority of those voting must vote in favor of organization.

(3) This act shall not confer upon the court jurisdiction to hear, adjudicate, and settle questions concerning the priority of appropriation of water between districts and other persons. Jurisdiction to hear and determine priority of appropriation, and questions of right growing out of, or in any way connected with a priority of appropriation, are expressly excluded from this act and shall be determined as otherwise provided by the laws of Montana.

History: En. Sec. 9, Ch. 100, L. 1969.

89-3410. Filing of documents after organization. Sooner than thirty-one (31) days after the district has been decreed organized, the clerk of the court shall transmit to the secretary of state, water board, and to the county clerk and recorder in each of the counties having lands in the district, copies of the election results, the decree of the court incorporating the district, and a description of the boundaries of the district. Copies of the same documents shall be filed in the office of the secretary of state in the same manner as articles of incorporation are required to be filed under the laws governing corporations. Copies shall also be filed in the office of the county clerk and recorder of each county in which a part of the district may be. The clerk and recorder of each county where the articles are filed and the secretary of state shall collect filing fees as provided by law.

History: En. Sec. 10, Ch. 100, L. 1969.

89-3411. Reimbursement for expenses of organizing election. If organized, the district shall reimburse the county, or counties, for the expenses incurred in the organizing election.

The costs of conducting the preliminary and feasibility studies shall be considered costs of construction of an approved project and shall be included in determination of the repayment schedules by the directors of the district.

History: En. Sec. 11, Ch. 100, L. 1969; amd. Sec. 1, Ch. 18, L. 1973.

Amendments

The 1973 amendment added the second paragraph.

89-3412. Appointment of directors—terms of office—vacancies—first annual meeting—corporate surety bond. If a district is organized, the court shall:

(1) establish by court order the number of persons who shall comprise the directors, appoint persons who are electors within the district to membership on the board of directors, and fix their compensation. The number shall not be less than three (3) nor more than eleven (11) persons. In fixing the number and making the appointments the court shall consider the interests and purposes to be served by the district. Upon a verified petition filed by a majority of the directors and for good cause shown, the court may enlarge or reduce the membership of the directors, but not to exceed eleven (11) nor to be less than three (3);

(2) fix the terms of office so that approximately one-third (⅓) of the directors first appointed shall serve for one (1) year; approximately one-third (⅓) shall serve two (2) years; and the remainder shall serve three (3) years. All succeeding terms shall be three (3) years. Unless excused for good cause, a director who misses three (3) consecutive regular meetings has vacated his postition;

(3) fill all vacancies on the board by appointment or reappointment;

(4) specify a date for the first annual meeting of the directors;

(5) specify the amount and form of a corporate surety bond which each member of the directors shall furnish at the expense of the district, conditioned upon his faithful performance of his duties as a director.

History: En. Sec. 12, Ch. 100, L. 1969.

89-3413. Selection of officers—bylaws and rules—minutes—regular and special meetings. (1) The directors shall select from among themselves a chairman, vice-chairman, secretary, and other necessary officers. The directors shall adopt bylaws and rules for the conduct of meetings. All official acts of the directors shall be entered in a book of minutes to be kept by the secretary.

(2) The directors shall establish times for regular meetings and may hold special meetings upon the call of the chairman or any two (2) members, and (except in case of emergency) upon at least three (3) days notice of the time, place, and purpose of the meeting.

History: En. Sec. 13, Ch. 100, L. 1969.

89-3414. Powers of directors. On behalf of the district, the directors may:

(1) adopt an official seal;

(2) sue and be sued;

(3) adopt rules to promote and encourage water recreation, including requirements concerning public access areas and facilities, and rules respecting the use of reservoirs and waters, picnic sites, and other recreational areas operated by the district. Rules adopted shall be filed with the secretary of directors and shall be available to any interested party upon reasonable request;

(4) enter private property for the purposes of making surveys, provided that just compensation for actual damages is made;

(5) provide for reimbursing of its members for actual expenses;

(6) appropriate water and initiate or participate in the adjudication of streams;

(7) acquire, undertake, construct, develop, improve, maintain, and operate works and all incidental facilities;

(8) acquire by purchase, exchange, gift, lease, grant, devise, or otherwise, lands, water, water rights, or rights of way as necessary for the execution of any authorized function of the district. Title to all property (including water rights) shall be in the name of the district;

(9) merge with other special districts as hereinafter provided;

(10) hold and dispose of property as necessary or convenient in the performance of the functions of the district;

(11) call upon the county attorney or attorney general for such legal services as the district may require, or in the discretion of the directors, employ private legal counsel;

(12) withhold the delivery of water upon which there are any defaults or delinquencies of payment, and otherwise dispose of that water while the default or delinquency continues;

(13) borrow money and incur indebtedness and issue bonds to finance works as provided by this act;

(14) refund bonded indebtedness incurred by the district as provided by this act;

(15) after a hearing held in accordance with section 17 [89-3417] of this act, make assessments sufficient to meet the budgetary requirements for the coming year;

(16) contract for service, for water furnished, or for the sale of water with any person;

(17) fix and revise from time to time and collect rates, fees, and other charges for the services, facilities, or water furnished by the district to any person;

(18) allocate or reallocate unused waters of the district;

(19) co-operate with; accept grants, loans, and other assistance from; act as agent for; and enter into agreements with any and all state or federal agencies, and exercise all necessary or convenient powers in connection therewith;

(20) enter into any obligation or contract with an agency of the federal government for the construction, operation, and maintenance of works; or for the assumption as principal or guarantor of indebtedness to the United States on account of district lands under the provisions of the federal reclamation act and rules established under that act; or contract with an agency of the federal government for a water supply under any federal act providing for or permitting such a contract. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. If a contract is made with an agency of the federal government, the directors may deposit bonds of the district with the United States at ninety per cent (90%) of their par value, to secure the amount to be paid by the district to the United States under any contract, the interest on the bonds of the district to be applied as specified by the contract. If bonds of the district are deposited with the United States, it is the duty of the directors to make an assessment sufficient to meet all payments accruing under the terms of any contract with the United States;

(21) accept appointment of the district as fiscal agent for the United States or authorization of the district to make collections of moneys for or on behalf of the United States in connection with any federal reclamation projects and the district is authorized to act and to assume the duties and liabilities incident to this action. However, the action must be approved by a majority of the electors voting at an election held as provided in section 24 [89-3424]. The directors may do all things required by federal statutes and rules and require prompt payment of all charges as a prerequisite to water service;

(22) in addition to all voted indebtedness, borrow money as necessary but the amount shall not at any one time exceed five per cent (5%) of the taxable valuation of real property in the district;

(23) mortgage property owned by the district if the terms of the mortgage are not inconsistent with the provisions of a resolution authorizing the sale of bonds;

(24) use any surplus funds to purchase outstanding bonds;

(25) make contracts incidental to the performance of the district's functions, and employ and fix the compensation of employees, agents or consultants as are deemed necessary, including but not limited to, a manager, attorneys, accountants, engineers, construction and financial experts;

(26) co-operate with soil and water conservation districts to obtain agreements to carry out soil conservation measures and proper farm plans from owners of lands situated in the drainage area above each retention reservoir to be installed with federal assistance.

History: En. Sec. 14, Ch. 100, L. 1969.

89-3415. Participation in federal programs. A district organized under this act, by itself or in conjunction with others, as a sponsoring organization to participate in all federal programs including, but not limited to, the Watershed Protection and Flood Prevention Act of 1954 (68 Stat. 666), the federal Water Project Recreation Act of 1965 (79 Stat. 213), the federal Reclamation Act of 1902 (32 Stat. 388), and amendments to those acts.

History: En. Sec. 15, Ch. 100, L. 1969.

Compiler's Notes

The Watershed Protection and Flood Prevention Act of 1954, referred to in this section, is compiled in the United States Code as Tit. 16, sec. 1001 et seq. and Tit. 33, sec. 701b note.

The federal Water Project Recreation Act of 1965 is compiled in the United States Code as Tit. 16, sec. 460*l*-12.

The federal Reclamation Act of 1902 is compiled in the United States Code as Tit. 43, sec. 371 et seq.

89-3416. Assessments. (1) To the extent that anticipated revenues from rates, fees, and other charges fixed pursuant to section 14, subsection (17) [89-3414 (17)] will not be sufficient to meet the district's anticipated obligations for annual operation, maintenance, and replacement or depreciation of works, or for payment of the interest and principal on bonded indebtedness, the directors may make an assessment of not more than two (2) mills on all taxable real property in the district for the purpose of fully meeting such obligations.

(2) In addition to the assessment authorized by subsection (1), the directors may annually make an assessment of up to three (3) mills on the taxable real property in the district to pay interest and principal on bonded indebtedness.

(3) The assessments are a lien upon each lot or parcel of land within the district to the extent of the assessment on each.

(4) All assessments have the same force and effect as other liens for taxes and their collection shall be enforced in the way provided for enforcement of liens for county taxes. Assessments, if not paid, become delinquent at the same time as county taxes.

(5) Except as provided in section 29 [89-3429], approval of the electors is not required for the making of these assessments.

History: En. Sec. 16, Ch. 100, L. 1969.

89-3417. Notice of public budget hearing. (1) The directors shall, prior to the first Monday in May of each year, give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act of the intention to hold a public budget hearing. The notice shall include the date, time, place, and general agenda.

(2) At the hearing, the directors shall:

(a) review the present budget;

(b) present the budget for the next year;

(c) hear and consider protests from any elector;

(d) adopt the budget for the next year;

(e) set the assessment for the next year.

History: En. Sec. 17, Ch. 100, L. 1969.

89-3418. Directors to inform county assessor and treasurer annually concerning budget, special assessments and realty—multi-county districts. (1) Before the second Monday in July of each year, the directors shall provide the county assessor and treasurer with:

(a) the budget for the current fiscal year;

(b) a statement of the amount of special assessments to be collected for the districts;

(c) a listing of all real property within the district.

(2) If the district is located in more than one (1) county, the directors shall provide this information to each of the county assessors and treasurers.

History: En. Sec. 18, Ch. 100, L. 1969.

89-3419. Collection of special assessments—multi-county districts—investment of surplus funds—interest. (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one (1) county, all assessments collected shall be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank insured by the Federal Deposit Insurance Corporation or in direct obligations of the United States government payable within one hun-

dred eighty (180) days from the time of investment. All interest collected on the deposits or investments shall be credited to the fund from which the money was withdrawn. However, five per cent (5%) of the interest shall be deposited in the general fund of the county.

History: En. Sec. 19, Ch. 100, L. 1969.

89-3420. Condemnation authorized—water rights. The district may exercise the right of eminent domain in the manner provided by the law to take private property for public use, with just compensation, where the taking is necessary for the purposes of the district. Water rights as such shall not be subject to such taking, but may be taken as an incident to the condemnation of land to which such rights are appurtenant, where the taking of the land is the principal purpose of the condemnation.

History: En. Sec. 20, Ch. 100, L. 1969.

89-3421. Annual written report of directors' activities. Before August 1 of each year, the directors shall send a written report of their activities during the previous fiscal year to the court and to the water board. Reports shall be in the form, and contain the information, prescribed by the water board.

History: En. Sec. 21, Ch. 100, L. 1969.

89-3422. State examiner to examine financial records—report—fee. At least once each year the state examiner shall examine the financial records of each district and file a report of the examination with the water board and court. The state examiner shall collect a fee for the examination equal to that charged irrigation districts.

History: En. Sec. 22, Ch. 100, L. 1969.

Cross-References

Examiner's functions transferred, sec. 82A-903(3)(t).

89-3423. Persons entitled to vote. (1) Only persons who are taxpayers upon and owners of real property located within the district and whose names appear upon the last completed assessment roll of some county within the district for state, county and school district taxes are electors and shall be entitled to vote in elections, provided that:

(a) an elector need not reside within the district in order to vote;

(b) where a corporation owns taxable real property within the boundaries of the conservancy district, the authorized agent of such corporation shall be entitled to cast a vote on behalf of the corporation;

(c) where land is under contract of sale to a purchaser and the contract is recorded, only the purchaser shall have the right to vote;

(d) guardians, executors, administrators, and trustees of real property within the district, shall be entitled to cast the vote for the owner of the land.

(2) When voting, an agent of a corporation or of co-owners, or a guardian, executor, administrator, trustee, or purchaser under contract of sale, may be required to show his authority by the judges of the election.

History: En. Sec. 23, Ch. 100, L. 1969.

89-3424. Election procedures. Election procedures after organization are:

(1) The directors shall designate the polling places, at least one (1) in each county, and hours when the polls will be open;

(2) Notice shall be published of the location of polling places and hours when the polls are open as provided in section 3, subsection (11) [89-3403 (11)] of this act;

(3) The directors shall appoint three (3) judges for each polling place and fix their compensation;

(4) The judges shall appoint one (1) of their number as clerk of the election;

(5) The clerks and recorders of the counties in which the election is to be held shall supply poll lists, registers, ballots, and other necessary election supplies;

(6) The judges shall cause the ballots to be counted and certify the results to the directors;

(7) The directors shall canvass the returns;

(8) The directors shall reimburse the counties for actual expenses incurred in the election.

History: En. Sec. 24, Ch. 100, L. 1969.

89-3425. Challenging voters — oath — penalty for false subscription. An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

"I _____(name) solemnly swear (or affirm) that I am an elector of the district and have not voted today."

False subscription to the oath or affirmation is perjury and punishable as such.

History: En. Sec. 25, Ch. 100, L. 1969.

89-3426. Issuance of bonds—maximum term—sale as single issue of multi-purpose bonds. A district may issue bonds payable from revenues, assessments, or both, or the district may use other financing as provided by this act for the cost of works. Bonds issued shall be for a maximum term of not to exceed forty (40) years. Bonds for more than one purpose may be sold as a single issue.

History: En. Sec. 26, Ch. 100, L. 1969; amd. Sec. 43, Ch. 234, L. 1971.

Amendments

The 1971 amendment deleted from the end of the second sentence "and a maximum rate of interest not more than six per cent (6%)."

Effective Date

Section 44 of Ch. 234, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 9, 1971.

89-3427. Determination of amount of bonds to be issued. In determining the amount of bonds to be issued, the directors may include:

(1) all costs of works;

(2) all costs and estimated costs of issuance of the bonds;

(3) interest which they estimate will accrue on money borrowed during the construction period and for six (6) months after the period.

History: En. Sec. 27, Ch. 100, L. 1969.

89-3428. Resolution for issuance of bonds—notice—election. When the directors find it necessary to issue bonds, the directors shall:

(1) pass a resolution which includes:

(a) the purpose or purposes for which the bonds will be issued;

(b) the maximum amount and term of the bonds;

(c) the maximum interest rate the bonds will bear;

(d) whether the bonds will be repaid from revenues, assessments, or both.

(2) give notice as provided in section 3, subsection (11) [89-3403 (11)] of this act which shall include the resolution adopted by the directors, location of polling places, and hours when the polls will be open;

(3) hold an election as provided by section 24 [89-3424] of this act.

History: En. Sec. 28, Ch. 100, L. 1969.

89-3429. Approval of bond issue at election—authorizes assessments—recording of election results—validity of election—single proposition. (1) For a bond issue to be approved, forty per cent (40%) of the qualified electors must vote thereon, and sixty per cent (60%) of those voting must approve the issue.

(2) Approval of the bond issue shall authorize the directors to make assessments as provided in section 16 [89-3416] necessary to pay the principal and interest on bonds issued.

(3) The directors shall enter the results of the election in their records.

(4) If otherwise fairly conducted, no irregularities or informalities shall invalidate the election.

(5) Bonds for more than one purpose may be submitted to the electors as a single proposition.

History: En. Sec. 29, Ch. 100, L. 1969.

89-3430. Resolution providing for form, execution and issuance of bonds—bids—private sale—sale price—rejection of bids. If a bond issue is approved, the directors shall by resolution provide for the form and execution of the bonds and for issuance of all or any part of the bonds. After adequate notice that sealed proposals will be received, the directors may award the purchase of all or a part of the issue to the best bidder or bidders, and may sell at private sale any or all bonds not sold on bids.

The said bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board shall reserve the right to reject any and all bids and to sell the said bonds at private sale.

History: En. Sec. 30, Ch. 100, L. 1969.

89-3431. Comparable to municipal bonds—exempt from taxation. Bonds issued under this act have the same force, value, and use as bonds issued by a municipality and are exempt from taxation as property within the state of Montana.

History: En. Sec. 31, Ch. 100, L. 1969.

89-3432. Interim receipts—negotiability. Pending preparation of the bonds sold under this act, receipts or certificates may be issued to purchasers in the form, and with provisions, as determined by the directors. Bonds and interim receipts or certificates are fully negotiable as provided by the Uniform Commerical Code—Investment Securities.

History: En. Sec. 32, Ch. 100, L. 1969.

Cross-References

Uniform Commercial Code—Investment Securities, sec. 87A-8-101 et seq.

89-3433. Registration of bonds—copy to be furnished county treasurer. (1) When duly executed, all bonds issued under this act shall be registered by the county treasurer of the county in which the largest portion of the taxable valuation of real property of the district is located. They shall be registered in a book provided for that purpose before being delivered to the purchaser.

(2) The registration shall show:

(a) the number and amount of each bond;

(b) the date of issue and date redeemable;

(c) the name of the purchaser;

(d) the amount and due date of all payments required on the bonds.

(3) The directors shall provide the county treasurer with an unsigned and canceled printed copy of each issue of bonds of the district. The copy shall be preserved in his office.

History: En. Sec. 33, Ch. 100, L. 1969.

89-3434. Deposit of sales proceeds — disposition — investment. (1) Proceeds from the sales of bonds shall be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds shall be paid by the county treasurer on written order of the directors. Proceeds shall only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds which is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank insured by the Federal Deposit Insurance Corporation or to invest in direct obligations of the United States government. The obligations shall be payable within not to exceed one hundred eighty (180) days from the time of deposit or investment.

History: En. Sec. 34, Ch. 100, L. 1969.

89-3435. Refunding bonds authorized—redemption. (1) Refunding bonds may be issued in the same way as any other bonds authorized by this act.

(2) All bonds, original issue or refunding issue, shall be redeemable when one-half (½) of the term or ten (10) years of the term for which they were issued, whichever may be the less, has expired. Redemption may be made on any interest due date of any bond prior to its maturity after the bond shall be subject to redemption as herein provided. The right of redemption, as herein provided, must be stated on the face of each bond.

History: En. Sec. 35, Ch. 100, L. 1969.

89-3436. Fund for retirement of bonds—investment and disbursement. Revenue, assessment, and other funds on hand, including reserves pledged for the payment and security of outstanding bonds may be deposited in a fund created for the retirement of bonds and may be invested and disbursed as provided by this act, to the extent consistent with the resolution authorizing the outstanding bonds.

History: En. Sec. 36, Ch. 100, L. 1969.

89-3437. Revolving funds—purpose—excess money—funds deposited with county treasurer. (1) The directors by resolution may establish revolving funds to finance, on a reimbursable basis:

(a) construction, purchase, lease and operation of revenue-producing works;

(b) contracts to provide services or facilities.

(2) Money in the revolving fund shall not be spent for any purposes other than those specified in the resolution. However, excess money may be transferred to any sinking and interest fund of the district.

(3) The county treasurer of the county having the largest portion of the taxable valuation of real property of the district shall maintain a separate account for each revolving fund of the district, and all money collected under the resolution shall be deposited with the county treasurer.

History: En. Sec. 37, Ch. 100, L. 1969.

89-3438. Petition for merger of districts—hearing and notice—merger into new district—inclusion in another district—majority of electors may kill merger by petition—existing obligations. (1) In case two (2) or more districts have been organized in a territory which, in the opinion of the directors of each of the districts, should constitute but one (1) district, the directors of the districts may petition the court for an order merging the districts into a single district. The petition shall be filed in the office of the clerk of the district court in and for that county which has the largest portion of taxable valuation of property within the districts sought to be included, as shown by the tax rolls of the respective counties. The petition shall set forth facts showing that the purposes of this act would be served by the merging of the districts, and that the merger would promote the economical execution of the purposes for which the districts were organized. A copy of the petition shall be filed with the water board.

(2) Upon the filing of the petition, the court shall by order fix a time and place of hearing; and the clerk shall give notice as specified in section 3, subsection (11) [89-3403 (11)] of this act as well as by mail to the directors of the districts which would be merged. The notice shall contain the purpose, time, and the place of the hearing.

(3) Upon the hearing, should the court find that the averments of the petition are true and that the districts, or any of them, could feasibly and profitably be merged, it shall order that the merger take place and the districts shall be merged into one (1) district and proceed as such. The court shall designate the corporate name of the district, and further proceedings shall be taken as provided for in this act. The court shall by order appoint the directors of the district, who shall thereafter have powers and be subject to rules as are provided for directors in districts created in the first instance.

(4) Instead of organizing a new district from the constituent districts, the court may, in its discretion, direct that one (1) or more of the

districts described in the petition be included in another of the districts, which other shall continue under its original corporate name and organization; or the court may direct that the district or districts so absorbed shall be represented on the directors of the original districts, designating what members of the directors of the original district shall be retired from the new board, and what members representing the included district or districts shall take their places.

(5) If the court receives a petition opposing the merger, signed by a majority of the electors of any of the concerned districts, the court shall not grant the order and shall dismiss the petition.

(6) Upon merger or inclusion, existing obligations shall remain exclusively with those who bore them prior to the merger or inclusion, except with the written consent, given prior to the merger or inclusion, of those who did not bear the obligations.

History: En. Sec. 38, Ch. 100, L. 1969.

89-3439. Procedure for annexing realty. To annex real property to the district, the procedure is:

(1) The directors shall petition the court.

(2) The petition shall:

(a) give a general description of the real property to be annexed sufficient to enable a person to determine if his property is in the proposed annexation;

(b) describe the benefits to accrue to the real property as a result of the annexation.

(3) The court shall:

(a) give notice and hold a hearing on the petition;

(b) upon good cause shown, order or deny the annexation.

History: En. Sec. 39, Ch. 100, L. 1969.

89-3440. Pre-annexation bonds not lien without prior agreement. Real property annexed to a district shall not incur any liens by reason of bonds issued before annexation unless agreed to by the owners of the annexed property, in writing, prior to annexation.

History: En. Sec. 40, Ch. 100, L. 1969.

89-3441. Exclusion of territory from district—procedure. Any territory included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its inclusion therein, may be excluded therefrom.

The procedure for exclusion is:

(1) A petition for exclusion shall be initiated by either the directors or the owner or owners of the land sought to be excluded.

(2) The petition shall give a description of the territory sought to be excluded sufficient to enable a person to determine if his property is in the proposed exclusion and shall set forth that such territory is not

benefited in any manner by the district or its continued inclusion therein, and shall request that such territory be excluded from the district.

(3) When owners of property initiate the petition for exclusion, the petition shall be filed with the secretary of the district and shall be accompanied by a deposit of one hundred dollars ($100) to meet the costs incident to the process of exclusion. The unexpended balance of the deposit shall be returned to the petitioner.

(4) Upon the filing of such petition with the secretary of the district, the secretary shall duly call a meeting of the directors to consider the petition. The directors shall approve or disapprove of the merits of the petition. The secretary shall then file the petition, together with a copy of the action of the directors, with the court.

(5) The court shall give notice, hold a hearing, and issue an order either granting or denying the petition.

History: En. Sec. 41, Ch. 100, L. 1969.

89-3442. Procedure for dissolution of district. (1) The procedure for dissolution of a district is:

(a) a resolution shall be passed by the directors requesting dissolution; or

(b) a petition signed by twenty per cent (20%) of the electors representing ten per cent (10%) of the taxable valuation of real property in the district shall be presented to the directors; or

(c) if the district or its directors have been inactive for one (1) year or more, any elector may present a petition.

(2) The resolution or petition shall be presented to the court by the directors, or by the petitioners if the directors remain inactive.

(3) Not more than one (1) resolution or petition may be presented to the court in any twenty-four (24) month period, and no such petition may be presented during the first twenty-four (24) months after a district's initial organization.

History: En. Sec. 42, Ch. 100, L. 1969.

89-3443. Dissolution election — majority approval required. (1) After receipt of petition or resolution for dissolution, the court shall order an election in the way provided by section 24 [89-3424] of this act.

(2) For dissolution to be approved, a majority of the electors voting must favor dissolution.

History: En. Sec. 43, Ch. 100, L. 1969.

89-3444. Submission of termination plan—termination by directors or receiver—court order—retention of jurisdiction. (1) In the event the vote is for dissolution, any qualified elector, or the board of directors of the district may, within the time fixed by the court, present a written

plan for terminating the affairs of the district which shall include assignment of any water rights and works owned by the district.

(2) The plan may specify that the affairs of the district shall be terminated by the directors or by a receiver appointed by the court.

(3) On a day fixed by the court, the court shall consider the plan or plans and shall enter an order establishing a plan for the termination of the affairs.

(4) The court shall retain jurisdiction to modify the plan and shall supervise the termination.

History: En. Sec. 44, Ch. 100, L. 1969.

89-3445. Appointment of receiver—directors' authority ceases—assessments by receiver—annual assessments—disposition of assessments. (1) If no plan is presented on or before the date set by the court, the court shall appoint a receiver to terminate the affairs of the district under the supervision of the court.

(2) Upon the appointment of any receiver all the authority of the directors shall cease. However, until dissolution, the receiver shall have authority to levy assessments for:

(a) the payment of obligations of the district;

(b) the costs of termination.

(3) The directors, or if there is a receiver, then the receiver with the approval of the court, shall make assessments each year in an amount large enough to retire the obligations of the district.

(4) If a receiver has been appointed, he shall direct, under court supervision, the disposition of all assessments collected.

History: En. Sec. 45, Ch. 100, L. 1969.

89-3446. Entry of dissolution order—certified copy. When it appears to the satisfaction of the court that:

(1) all obligations of the district have been discharged;

(2) all the costs of termination have been paid, the court shall enter an order dissolving the district. A certified copy of the order shall be recorded by the clerk of the court in all counties in which the district was situated and filed with the secretary of state.

History: En. Sec. 46, Ch. 100, L. 1969.

89-3447. County general funds to receive funds remaining after dissolution—proportion. All funds remaining after dissolution of a district shall be deposited in the general fund of the counties in which the district is located in proportion to the taxable value of property within the district in each county.

History: En. Sec. 47, Ch. 100, L. 1969.

89-3448. No power to generate, distribute or sell electric energy. Nothing in this act shall be construed to grant to the district the power to generate, distribute or sell electric energy.

History: En. Sec. 48, Ch. 100, L. 1969.

89-3449. Other agencies not affected. The provisions of this act shall not be construed to, in any manner, abrogate or limit the rights, powers, duties and functions of the water board, state soil conservation committee, soil and water conservation districts, state board of health, or the fish and game commission; but shall be held to be supplementary thereto and in aid thereof.

History: En. Sec. 49, Ch. 100, L. 1969.

Separability Clause

Section 50 of Ch. 100, Laws 1969 read "It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 51 of Ch. 100, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 24, 1969.

CHAPTER 35—FLOODWAY MANAGEMENT AND REGULATION

Section 89-3501. Findings.
89-3502. Policy and purposes.
89-3503. Definitions.
89-3504. Program for delineation of floodways—floodway-encroachment lines—land-use regulations.
89-3505. Artificial obstructions and nonconforming uses as nuisances.
89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses.
89-3507. Permits for obstructions—application—factors considered—fees.
89-3508. Powers and duties of board relative to obstructions.
89-3509. Authority to enter and investigate lands or waters.
89-3510. Obstructions exempt where drainage area is small.
89-3511. Orders and rules—judicial remedy.
89-3512. Floodway obstruction removal fund.
89-3513. Penalties for violation.
89-3514. Permit construed as added requirement—exception—immunity.
89-3515. Remedies not exclusive.

89-3501. Findings. The people of the state of Montana find that recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions; all of which are detrimental to the health, safety, welfare and property of the occupants of flooded lands and the people of this state, and that the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices which will prevent and alleviate flooding threats to life and health and reduce private and public economic losses.

History: En. Sec. 1, Ch. 393, L. 1971.

Title of Act

An act relating to management and regulation of the floodways of watercourses as prescribed; to define terms; to provide for certain duties and powers of the Montana water resources board as prescribed; to provide for a floodway obstruction removal fund; to declare certain acts unlawful; and to provide for penalties.

89-3502. Policy and purposes. The policy and purposes of this act are to guide development of the floodway areas of this state consistent with the enumerated findings; to recognize the right and need of watercourses to periodically carry more than the normal flow of water; to

provide state co-ordination and technical assistance to local units in management of floodway areas; to co-ordinate federal, state and local management activities for floodway areas; to encourage local governmental units to manage flood-prone lands including the adoption, enforcement and administration of land-use regulations and to provide the Montana water resources board with authority necessary to carry out a comprehensive floodway management program for the state.

Specifically, it is the purpose of this act to:

(1) restrict or prohibit uses which are dangerous to health, safety of property in times of flood or cause increased flood heights or velocities;

(2) require that uses vulnerable to floods, including public facilities which serve such uses, be provided with flood protection at the time of initial construction;

(3) develop and provide information to identify lands which are unsuited for certain development purposes because of flood hazard.

History: En. Sec. 2, Ch. 393, L. 1971.

89-3503. Definitions. As used in this act, unless the context otherwise requires:

(1) "A flood of one hundred (100) year frequency" means a flood magnitude expected to recur on the average of once every one hundred (100) years, or a flood magnitude which has a one per cent (1%) chance of occurring in any given year;

(2) "Artificial obstruction" shall mean any obstruction which is not a natural obstruction;

(3) "Channel" shall mean the geographical area within either the natural or artificial banks of a watercourse or drainway;

(4) "Board" shall mean the Montana water resources board;

(5) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(6) "Designated floodway" shall mean a floodway whose limits have been designated and established by order of the board.

(7) "Drainway" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water less than nine (9) months of the year, having a bed and well-defined banks; provided, that in the event of doubt as to whether a depression is a watercourse or drainway, it shall be presumed to be a watercourse;

(8) "Flood" shall mean the water of any watercourse or drainway which is above the bank or outside the channel and banks of such watercourse or drainway;

(9) "Floodway" shall mean the channel of a watercourse or drainway and those portions of the floodplain adjoining the channel which are reasonably required to carry and discharge the flood water of any watercourse or drainway;

(10) "Floodway-encroachment lines" shall mean the lines limiting a designated floodway;

(11) "Floodplain" shall mean the area adjoining the watercourse or drainway which has been or may hereafter be covered by flood water;

(12) "Establish" shall mean construct, place, insert, or excavate;

(13) "Natural obstruction" shall mean any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway by a nonhuman cause;

(14) "Obstruction" shall mean any dam, wall, riprap, embankment, levee, dike, pile, abutment, projection, revetment, excavation, channel rectification, bridge, conduit, culvert, building, refuse, automobile body, fill, or other analogous structure or matter in, along, across, or projecting into any floodway which may impede, retard or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the natural flow of the water would carry the same downstream to the damage or detriment of either life or property;

(15) "Owner" shall mean any person who has dominion over, control of, or title to an obstruction;

(16) "Political subdivision" shall mean any incorporated city or town or any county organized and having authority to adopt and enforce land-use regulations; and

(17) "Watercourse" shall mean any depression two (2) feet or more below the surrounding land serving to give direction to a current of water at least nine (9) months of the year, having a bed and well-defined banks; provided, that it shall, upon order of the board, also include any particular depression which would not otherwise be within the definition of watercourse.

History: En. Sec. 3, Ch. 393, L. 1971; amd. Sec. 1, Ch. 294, L. 1973.

Amendments

The 1973 amendment substituted subdivision (1) for a parallel definition of a flood of fifty-year frequency; inserted subdivision (5); and renumbered the remaining subsections accordingly.

89-3504. Program for delineation of floodways — floodway-encroachment lines—land-use regulations. (1) The board shall initiate a comprehensive program for the delineation of designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data, and have authority to enter into arrangements with the United States geological survey, the United States army corps of engineers or any other state or federal agency for such acquisition.

(2) When sufficient data have been acquired to reasonably locate the floodway of a flood of one hundred (100) year frequency, the board shall establish, by order, after a public hearing, floodway-encroachment lines for such a floodway within which a political subdivision may establish land-use regulation. The board shall furnish such data to officials of the political subdivision having jurisdiction over such areas together with a map outlining the areas involved, a copy of this act, adopted rules and regulations of the board, and suggested minimum standards. These standards, rules and regulations shall reflect gradations in flood hazard based on

flood frequency and other criteria as outlined in subsection (2) of section 7 [89-3507 (2)] of this act. The location of the encroachment lines shall be the estimated outer boundary of the floodway of one hundred (100) year frequency flood, as determined from the available data. The board shall record all floodway-encroachment lines established by it in the office of the county clerk and recorder of each county in which such lines are found. The board shall have the power to alter such lines at any later time, by order, after a public hearing if a re-evaluation of the then available flood data warrants it. Notice of any such hearing or order of the board establishing or altering any such line shall be given by publishing such notice once each week for three consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than ten (10) days prior to the date set for the hearing or the effective date of such order.

(3) If within one (1) year from the date of transmittal of the floodplain information to officials of the political subdivisions, any political subdivision has failed to adopt land-use regulations which meet or exceed the minimum standards of the board, the designated floodway shall be enforced and no artificial obstruction or nonconforming use shall be established by any person within the floodway-encroachment lines for such a one hundred (100) year flood as established by the board under subsection (2) of this section, unless specifically authorized by the board.

History: En. Sec. 4, Ch. 393, L. 1971; amd. Sec. 2, Ch. 294, L. 1973.

Amendments

The 1973 amendment substituted "one hundred (100) year frequency" for "fifty-year frequency" throughout the section.

89-3505. Artificial obstructions and nonconforming uses as nuisances. Any artificial obstruction or nonconforming use in any designated floodway enforced under section 89-3504, subsections (3) or (4) and not exempt under section 6 [89-3506] of this act is hereby declared to be a public nuisance unless a permit has been obtained for such artificial obstruction or nonconforming use from the board.

History: En. Sec. 5, Ch. 393, L. 1971; amd. Sec. 3, Ch. 294, L. 1973.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504; and made a minor change in style. However, section 89-3504 has no subsection (4).

89-3506. Establishment of artificial obstructions or nonconforming uses unlawful—permitted open space uses—prohibited nonconforming uses. (1) It shall be unlawful for a person to establish any artificial obstruction or nonconforming use within a designated floodway, or (2) for any owner to permit any artificial obstruction to remain within a designated floodway without a permit from the board. This act shall not affect any existing artificial obstruction or nonconforming use established in the floodway prior to the effective date of this act and before the board has enforced a designated floodway under section 89-3504, subsections (3) or (4); provided, that no person shall make nor shall any owner allow alterations of any artificial obstruction within a designated floodway

whether the obstruction proposed for alteration was located in the floodway before or after the effective date of this act except upon express written approval of the board. Maintenance of an obstruction shall not be construed to be an alteration.

(2) The following open space uses shall be permitted within the designated floodway, to the extent that they are not prohibited by any other ordinance or statute, and provided they do not require structures other than portable structures, fill, or permanent storage of materials or equipment; (a) agricultural uses (b) industrial-commercial uses such as loading areas, parking areas, emergency landing strips (c) private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife management and natural areas, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails (d) forestry, including processing of forest products with portable equipment (e) residential uses such as lawns, gardens, parking areas and play areas (f) excavations subject to the issuance of a permit under section 7 [89-3507].

(3) The following nonconforming uses shall be prohibited within the designated floodway: (a) Any building for living purposes or place of assembly or permanent use by human beings (b) any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the carrying capacity of the floodway (c) the construction or permanent storage of any object subject to flotation or movement during flood level periods.

History: En. Sec. 6, Ch. 393, L. 1971; amd. Sec. 4, Ch. 294, L. 1973.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 in the second sentence of subsection (1); and made a minor change in style. However, section 89-3504 has no subsection (4).

89-3507. Permits for obstructions—application—factors considered—fees. (1) The board shall have the power to issue permits for the establishment or alteration of obstructions which would otherwise violate section 6 [89-3506] of this act. The application for the permit shall contain such information as the board shall require, including complete maps, plans, profiles and specifications of the obstruction and watercourse or drainway.

(2) In passing upon such application, the board shall consider (a) the danger to life and property by water which may be backed up or diverted by such obstruction, (b) the danger that the obstruction will be swept downstream to the injury of others, (c) the availability of alternate locations, (d) the construction or alteration of the obstruction in such a manner as to lessen the danger, (e) the permanence of the obstruction, (f) the anticipated development in the foreseeable future of the area which may be affected by the obstruction, and (g) such other factors as are in harmony with the purpose of this act. The board may make a part of such permit any reasonable conditions it may deem advisable. In order for the permit to continue to remain in force, the obstruction must be

maintained so as to comply with the conditions and specifications of the permit.

(3) Permits for obstructions to be established in the floodway of watercourses must be specifically approved or denied within a reasonable time by the board; permits for obstructions in the floodways or drainways shall be conclusively deemed to have been granted sixty (60) days after the receipt of such application by the board, or after such time as the board shall by rule specify, unless the board notifies the applicant that the permit is denied.

(4) Every application for a permit shall be accompanied by a nonrefundable application fee of ten dollars ($10) which the state treasurer shall credit to the floodway obstruction removal fund.

History: En. Sec. 7, Ch. 393, L. 1971.

89-3508. Powers and duties of board relative to obstructions. The powers and duties of the board relative to obstructions in a board floodway shall include the following:

(1) Where an obstruction to a floodway established under section 89-3504, subsections (2) or (4) has been created by fallen trees, silt, debris, wreckage, unanchored automobile bodies, and like matter, the board may, in its discretion, remove the obstruction, in which case the cost of removal shall be borne by the board; and

(2) Where, after investigation, notice, and hearing, an order has been issued to the owner of an obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, and the order is not complied with within such reasonable time as may be prescribed, or if the owner cannot be found or determined, the board may make or cause such removal or repairs to be made, the cost of which shall be borne by the owner and shall be recoverable in the same manner as debts are now recoverable by law.

History: En. Sec. 8, Ch. 393, L. 1971; amd. Sec. 5, Ch. 294, L. 1973.

Amendments

The 1973 amendment inserted the reference to subsection (4) of section 89-3504 near the beginning of subdivision (1); and made a minor change in style. However, section 89-3504 has no subsection (4).

89-3509. Authority to enter and investigate lands or waters. The board, its agents, surveyors, or other employees, may make reasonable entry upon any lands and waters in the state for the purpose of making any investigation, survey, removal, or repair contemplated by this act. An investigation of any natural or artificial obstruction shall be made by the board either on its own initiative, on the written request of any three (3) titleholders of land abutting the watercourse or drainway involved, or on the written request of any political subdivision.

History: En. Sec. 9, Ch. 393, L. 1971.

89-3510. Obstructions exempt where drainage area is small. This act shall not extend to any obstruction in the floodway of a watercourse or drainway where the drainage area above the same, either within or

without the state, is less than twenty-five (25) square miles in extent, unless a particular watercourse or drainway is expressly declared to be within the coverage of this act by order of the board.

History: En. Sec. 10, Ch. 393, L. 1971.

89-3511. Orders and rules—judicial remedy. The board may issue such orders and rules as are necessary to implement the provisions of this act. If an order is issued to the owner of an artificial obstruction not exempt under the provisions of section 6 [89-3506] of this act for its removal or repair, such order shall not become effective less than (10) days after a hearing is held relating to such order. In addition to any requirement imposed by subsection (2) of section 4 [89-3504 (2)] of this act, where any order is issued which affects with particularity the land adjacent to any watercourse or drainway, notice of the contents of such order and of any required hearing shall be mailed by the board to the titleholder of such land not less than ten (10) days before the effective date of such order, or, if there is a required hearing, to the titleholder of such land and to the owner of the obstruction not less than ten (10) days before the date of such hearing; provided, that such notice need not be given to the owner of the obstruction for an order issued pursuant to subsection (2) of section 8 [89-3508 (2)] of this act if the owner cannot be found or determined. All orders and rules issued by the board shall be on file at the offices of the board and in the office of the county clerk of each county affected by such order or rule. Any person aggrieved by any order of the board issued under this act may appeal from such order to a court of competent jurisdiction within thirty (30) days after its effective date. In the event such an appeal is taken, enforcement of such order shall be stayed pending the outcome of such appeal. Service of notice of the appeal shall be made upon the director of the board.

History: En. Sec. 11, Ch. 393, L. 1971.

89-3512. Floodway obstruction removal fund. The state treasurer is hereby directed to create and establish the floodway obstruction removal fund and to credit to such fund for the removal of obstructions as provided in subsection (1) of section 8 [89-3508 (1)] of this act, such money as shall be specifically appropriated or reappropriated during any biennium by the legislature. The Montana water resources board may allocate money from the floodway obstruction removal fund for purposes provided in subsection (1) of section 8 [89-3508 (1)] of this act.

History: En. Sec. 12, Ch. 393, L. 1971.

89-3513. Penalties for violation. (1) Any person who violates section 6 [89-3506] of this act shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one hundred dollars ($100), or be imprisoned in the county jail for not more than ten (10) days, or be both so fined and imprisoned. Each day's continuance of a violation shall be deemed a separate and distinct offense.

History: En. Sec. 13, Ch. 393, L. 1971.

89-3514. Permit construed as added requirement—exception—immunity. (1) The granting of a permit under the provisions of this act shall in no way affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision or of the United States, but shall be construed as an added requirement; provided, that if a political subdivision enacts and enforces land-use regulations which meet or exceed the minimum standards of the board, the board's recommendations in regard to artificial obstructions or nonconforming uses shall be advisory only. The grant or denial of a permit shall not have any effect on any remedy of any person at law or in equity; provided, that where it is shown that there is a wrongful failure to comply with this act, there shall be a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of any person bringing suit.

(2) No permit for the construction of any structure to be established within a designated floodway shall be granted by any political subdivision unless the applicant has first obtained the permit required by this act, or until the board acknowledges that such structure would not be an obstruction within the meaning of this act.

(3) No action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act shall be brought against the state, the board, a member of the board, or its employees or agents. No provision of this act shall be construed as interfering in any way with the right of the United States to regulate interstate commerce or the navigable waters of the United States.

History: En. Sec. 14, Ch. 393, L. 1971.

89-3515. Remedies not exclusive. The use of any one of the remedies or powers given to the board in this act shall not constitute a bar to the exercise of any other remedy or power given by this act.

History: En. Sec. 15, Ch. 393, L. 1971.

Separability Clause

Section 16 of Ch. 393, Laws 1971 read "If any section in this act or any part of any section is declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof."

TITLE 90—WEIGHTS—MEASURES AND GRADES—TIME—MONEY

Chapter 1. Standard weights and measures—state sealer, 90-153 to 90-194.
2. Apples, grades and boxes, 90-201.
3. Bread—standard weight and loaf, Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967.
6. Packaged commodities offered for sale, 90-621.

CHAPTER 1—STANDARD WEIGHTS AND MEASURES—STATE SEALER

Section 90-153. Meaning of terms.
90-154. Systems of weights and measures.
90-155. Definitions of special units of measure.
90-156. State standards of weight and measure.
90-157. Field standards and equipment.
90-158. State sealer, chief sealer, and deputy sealers of weights and measures.
90-159. General powers and duties of sealer.
90-160. Specific powers and duties of sealer—regulations.
90-160.1. Licensing of weighing devices.
90-161. Sealer—testing at state-supported institutions.
90-162. Sealer—general testing.
90-163. Sealer—investigations.
90-164. Sealer—inspection of packages.
90-165. Sealer—stop-use, stop-removal, and removal orders.
90-166. Sealer—disposition of correct and incorrect apparatus.
90-167. Sealer—police powers—right of entry and stoppage.
90-168. Powers and duties of chief sealer and deputy sealers.
90-169. Duty of owners of incorrect apparatus.
90-170. Method of sale of commodities—general.
90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions.
90-172. Method of sale of commodities—declarations of unit price on random packages.
90-173. Method of sale of commodities—misleading packages.
90-174. Method of sale of commodities—advertising packages for sale.
90-175. Sale by net weight.
90-176. Misrepresentation of price.
90-177. Meat, poultry, and seafood.
90-178. Bread.
90-179. Butter, oleomargarine, and margarine.
90-180. Fluid dairy products.
90-181. Flour, corn meal, and hominy grits.
90-182. Bulk deliveries sold in terms of weight and delivered by vehicle.
90-183. Furnace and stove oil.
90-184. Berries and small fruits.
90-185. Construction of contracts.
90-186. Hindering or obstructing officer—penalties.
90-187. Impersonation of officer—penalties.
90-188. Offenses and penalties.
90-189. Injunction.
90-190. Presumptive evidence.
90-191. Validity of prosecutions.
90-192. Separability provision.
90-193. Repeal of conflicting laws.
90-194. Citation.

90-101 to 90-152. (4212 to 4229, 4230.1, 4232, 4234 to 4238, 4240 to 4264) **Repealed.**

Repeal

Sections 90-101 to 90-152 (Secs. 3120 to 3134, 3136, Pol. C. 1895; Sec. 1, p. 137, L. 1901; Sec. 1, Ch. 91, L. 1907; Secs. 1 to 4, 6 to 11, 13 to 16, 18 to 25, 28 to 31, Ch. 34, L. 1911; Secs. 1 to 4, 6 to 13,

15 to 21, Ch. 83, L. 1913; Secs. 1, 2, Ch. 19, L. 1917; Sec. 1, Ch. 74, L. 1921; Secs. 1, 3, Ch. 140, L. 1921; Sec. 2, Ch. 84, L. 1935; Secs. 1, 4 to 31, Ch. 146, L. 1939; Sec. 1, Ch. 27, L. 1941; Secs. 1 to 5, Ch. 110, L. 1945; Sec. 1, Ch. 174, L. 1949; Sec. 1, Ch. 130, L. 1951; Secs. 1 to 6, Ch. 143, L. 1951; Sec. 2, Ch. 158, L. 1953; Sec. 1, Ch. 131, L. 1955; Sec. 1, Ch. 84, L. 1957; Sec. 1, Ch. 90, L. 1957; Sec. 1, Ch. 157, L. 1957; Sec. 1, Ch. 59, L. 1959; Sec. 1, Ch. 78, L. 1959; Sec. 1, Ch. 147, L. 1961; Sec. 44, Ch. 177, L. 1965), relating to standard weights and measures and the state sealer of weights and measures, were repealed by Sec. 24, Ch. 160, Laws 1965 and Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153 to 90-194.

90-153. Meaning of terms. When used in this act:

(1) The word "person" shall be construed to mean both the plural and singular, as the case demands, and shall include individuals, partnerships, corporations, companies, societies and associations.

(2) The words "weight(s) and (or) measure(s)" shall be construed to mean all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices, except that the term shall not be construed to include meters for the measurement of electricity, gas (natural or manufactured), or water when the same are operated in a public utility system. Such electricity, gas, and water meters are hereby specifically excluded from the purview of this act, and none of the provisions of this act shall be construed to apply to such meters or to any appliances or accessories associated therewith.

(3) The words "sell" and "sale" shall be construed to mean barter and exchange.

(4) The term "sealer" shall be construed to mean the state sealer of weights and measures.

(5) The terms "chief sealer" and "deputy sealer" shall be construed to mean, respectively, the state chief sealer of weights and measures and the deputy sealer of weights and measures.

(6) The term "intrastate commerce" shall be construed to mean any and all commerce or trade that is begun, carried on, and completed wholly within the limits of the state of Montana, and the phrase "introduced into intrastate commerce" shall be construed to define the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(7) The term "commodity in package form" shall be construed to mean commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of any auxiliary shipping container enclosing packages that individually conform to the requirements of this act. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be construed to be commodity in package form.

(8) A "consumer package" or "package of consumer commodity" shall be construed to mean a commodity in package form that is cus-

tomarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

(9) A "nonconsumer package" or "package of nonconsumer commodity" shall be construed to mean any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

History: En. Sec. 1, Ch. 99, L. 1969.

Title of Act

An act relating to weights and measures, providing for a state sealer of weights and measures, providing for a system of weights and measures, regulating the sale of commodities by weight and measure, providing for enforcement: repealing sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947.

90-154. Systems of weights and measures. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in the state of Montana. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the national bureau of standards are recognized and shall govern weighing and measuring equipment and transactions in the state.

History: En. Sec. 2, Ch. 99, L. 1969.

90-155. Definitions of special units of measure. The term "barrel" when used in connection with fermented liquor shall mean a unit of thirty-one (31) gallons. The term "ton" shall mean a unit of two thousand (2,000) pounds avoirdupois weight. The term "cord" when used in connection with wood intended for fuel purposes shall mean the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed.

History: En. Sec. 3, Ch. 99, L. 1969.

90-156. State standards of weight and measure. Such weights and measures in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by Montana for use as state standards shall, when the same shall have been certified as being satisfactory for use as such by the national bureau of standards, be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the office or laboratory of the state division of weights and measures, they shall not be removed from the said office or laboratory except for repairs or for certification, and they shall be submitted at least once in ten years to the national bureau of standards for certification.

History: En. Sec. 4, Ch. 99, L. 1969.

90-157. Field standards and equipment. In addition to the state standards provided for in section 4 [90-156] of this act, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of this act. The field standards shall be verified upon their initial receipt and at least once each year thereafter by comparison with the state standards.

History: En. Sec. 5, Ch. 99, L. 1969.

90-158. State sealer, chief sealer, and deputy sealers of weights and measures. There shall be a state sealer of weights and measures. The commissioner of agriculture shall be, ex officio, the state sealer. There shall be a chief sealer of weights and measures and deputy sealers of weights and measures, and necessary technical and clerical personnel, who shall be appointed by the sealer, and who shall hold office during good behavior, and who shall collectively comprise the state division of weights and measures, of which the chief sealer shall be the head.

History: En. Sec. 6, Ch. 99, L. 1969.

Cross-References

Sealer's position abolished and functions transferred, sec. 82A-402(3).

90-159. General powers and duties of sealer. The sealer shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by this act, and shall keep accurate records of the same. The sealer shall enforce the provisions of this act. He shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the state.

History: En. Sec. 7, Ch. 99, L. 1969.

Cross-References

Functions transferred to department of business regulation, sec. 82A-403(4).

90-160. Specific powers and duties of sealer — regulations. The sealer shall issue from time to time reasonable regulations for the enforcement of this act, which regulations shall have the force and effect of law. These regulations may include (1) schedules of fees for testing and certification, (2) standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form, (3) rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by sealers of weights and measures in the discharge of their official duties, (4) exemptions from the sealing or marking requirements of section 14 [90-166] of this act with respect to weights and measures of such character or size that such sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question, and (5) rules governing the voluntary registration of servicemen and service agencies. These regulations shall include specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in section 10 [90-162] of this act, designed to eliminate from use, without prejudice to apparatus that conforms as closely as practicable to the official standards, those (1) that are not accurate, (2) that are of such construction that they are faulty (that is, that

are not reasonably permanent in their adjustment or will not repeat their indications correctly), or (3) that facilitate the perpetration of fraud. The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments thereto, as recommended by the national bureau of standards and published in national bureau of standards handbook 44 and supplements thereto, or in any publication revising or superseding handbook 44, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the state of Montana, except in so far as specifically modified, amended, or rejected by a regulation issued by the sealer. For the purposes of this act, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section. Other apparatus shall be deemed to be "incorrect."

History: En. Sec. 8, Ch. 99, L. 1969.

90-160.1. Licensing of weighing devices. No person shall knowingly operate or use any unlicensed weighing devices in trade or commerce for ascertaining the weight of any commodity. Such license shall be obtained by making application to the department of business regulation upon such blank forms to be provided by the division of weights and measures, each license should include at least one (1) inspection per year. Every application shall be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity	Fees
499 pounds or less	$ 2.50
500 pounds through 1999 pounds	4.00
2,000 pounds through 7,999 pounds	10.00
8,000 pounds through 40,000 pounds	20.00
40,001 pounds or more	35.00

The capacity of a weighing device shall be determined by the manufacturer's rated capacity.

All licenses shall be annual and shall expire on December 31.

Any person failing to pay the renewal license fee when due as required by this act shall forfeit the right to use the weighing device, and it shall be taken out of service by the division of weights and measures.

History: En. 90-160.1 by Sec. 1, Ch. 244, L. 1973.

Title of Act

An act to prohibit the use of weighing devices in trade or commerce which are not licensed by the division of business regulation; establishing license fees; and providing an effective date.

Effective Date

Section 2 of Ch. 244, Laws 1973 read "This act shall be effective January 1, 1974." Approved March 9, 1973.

90-161. Sealer—testing at state-supported institutions. The sealer shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting

his findings, in writing, to the supervisory board and to the executive officer of the institution concerned.

History: En. Sec. 9, Ch. 99, L. 1969.

90-162. Sealer—general testing. When not otherwise provided by law, the sealer shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the sealer, within a twelve-month period, or less frequently if in accordance with a schedule issued by him, and as much oftener as he may deem necessary, to inspect and test, to ascertain if they are correct, all weights and measures commercially used (1) in determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or (2) in computing the basic charge or payment for services rendered on the basis of weight, measure, or of count: Provided, that with respect to single-service devices (that is, devices designed to be used commercially only once and to be then discarded) and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples: And provided further, that any itinerant peddler or hawker, using weights and measures, shall register his name and address with the chief sealer of weights and measures, in order that his equipment can be tested in accordance with the provisions of this law.

History: En. Sec. 10, Ch. 99, L. 1969.

90-163. Sealer—investigations. The sealer shall investigate complaints made to him concerning violations of the provisions of this act, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of this act and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

History: En. Sec. 11, Ch. 99, L. 1969.

90-164. Sealer—inspection of packages. The sealer shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the sealer may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the sealer may employ recognized sampling procedures under which the compliance of a given

lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall (1) sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or (2) dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the sealer.

History: En. Sec. 12, Ch. 99, L. 1969.

90-165. Sealer—stop-use, stop-removal, and removal orders. The sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts or commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of this act he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

History: En. Sec. 13, Ch. 99, L. 1969.

90-166. Sealer—disposition of correct and incorrect apparatus. The sealer shall approve for use, and seal or mark with appropriate devices, such weights and measures as he finds upon inspection and test to be "correct" as defined in section 8 [90-160] of this act, and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be "incorrect" as defined in section 8 [90-160] of this act, but which in his best judgment are susceptible of satisfactory repair: Provided, that, such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the sealer issued under the authority of section 8 [90-160] of this act. The sealer shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the sealer if not corrected as required by section 17 [90-169] of this act, or if used or disposed of contrary to the requirements of section 17 [90-169] of this act.

History: En. Sec. 14, Ch. 99, L. 1969.

90-167. Sealer—police powers—right of entry and stoppage. With respect to the enforcement of this act and any other acts dealing with weights and measures that he is or may be empowered to enforce, the

sealer is hereby vested with special police powers, and is authorized to arrest, without formal warrant, any violator of the said acts, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts of packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the sealer is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the sealer may specify.

History: En. Sec. 15, Ch. 99, L. 1969.

90-168. Powers and duties of chief sealer and deputy sealers. The powers and duties, given to and imposed upon the sealer by sections 9, 10, 11, 12, 13, 14, 15, and 37 [90-161, 90-162, 90-163, 90-164, 90-165, 90-166, 90-167, and 90-189] of this act are hereby given to and imposed upon the chief sealer and deputy sealers also when acting under the instructions and at the direction of the state sealer.

History: En. Sec. 16, Ch. 99, L. 1969.

90-169. Duty of owners of incorrect apparatus. Weights and measures that have been rejected under the authority of the sealer or of a deputy sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty (30) days or such longer period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially re-examined and found to be correct, or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the sealer for the registration of weights and measures servicemen and service agencies.

History: En. Sec. 17, Ch. 99, L. 1969.

90-170. Method of sale of commodities—general. Commodities in liquid form shall be sold only [by] liquid measure or by weight, and, except as otherwise provided in this act, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count: Provided, that liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold: And provided further, that the provisions of this section shall not apply (1) to commodities when sold for immediate consumption on the premises where sold, (2) to vegetables when sold by the head or bunch, (3) to com-

modities in containers standardized by a law of this state or by federal law, (4) to commodities in package form when there exists a general consumer usage to express the quantity in some other manner, (5) to concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or (6) to unprocessed vegetable and animal fertilizer when sold by cubic measure. The sealer may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

History: En. Sec. 18, Ch. 99, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "by" in the first sentence.

90-171. Method of sale of commodities—packages—declarations of quantity and origin—variations—exemptions. Except as otherwise provided in this act, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declarations of (1) the identity of the commodity in the package unless the same can easily be identified through the wrapper or container, (2) the net quantity of the contents in terms of weight, measure, or count, and (3) in the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by regulation issued by the director: provided, that, in connection with the declaration required under clause (2), neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in a package shall be used: And provided further, that under clause (2) the sealer shall, by regulation, establish (a) reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

History: En. Sec. 19, Ch. 99, L. 1969.

90-172. Method of sale of commodities—declarations of unit price on random packages. In addition to the declarations required by section 19 [90-171] of this act, any commodity in package form, the package being one of a lot containing random weights, measures, or counts

of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

History: En. Sec. 20, Ch. 99, L. 1969.

90-173. Method of sale of commodities — misleading packages. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the sealer.

History: En. Sec. 21, Ch. 99, L. 1969.

90-174. Method of sale of commodities—advertising packages for sale. Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is required by law or regulation to appear on the package: provided, that, where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parenthesis on the package) need appear in the advertisement: And provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than," or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo," "giant," "full," and the like) that tends to exaggerate the amount of commodity in the package.

History: En. Sec. 22, Ch. 99, L. 1969.

90-175. Sale by net weight. The word "weight" as used in this act in connection with any commodity shall mean net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

History: En. Sec. 23, Ch. 99, L. 1969.

90-176. Misrepresentation of price. Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style

as, and at last one-half (½) the height and width of the numerals representing the whole cents.

History: En. Sec. 24, Ch. 99, L. 1969.

90-177. Meat, poultry, and seafood. Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

History: En. Sec. 25, Ch. 99, L. 1969.

90-178. Bread. Each loaf of bread and each unit of a twin or multiple loaf of bread [manufactured] or procured for sale, kept, offered, exposed for sale, or sold, whether or not the bread is wrapped or sliced, shall weigh one-half (½) pound, one (1) pound, one and one-half (1½) pounds, or a multiple of one (1) pound, avoirdupois weight, within reasonable variations or tolerances that shall be promulgated by regulation by the sealer: provided, that the provisions of this section shall not apply to biscuits, buns, or rolls weighing eight (8) ounces or less, or to "stale bread" sold and expressly represented at the time of sale as such, and that the marking provisions of section 19 [90-171] shall not apply to unwrapped loaves of bread.

History: En. Sec. 26, Ch. 99, L. 1969.

Compiler's Notes

The compiler has inserted the bracketed word "manufactured" near the beginning of the section.

90-179. Butter, oleomargarine, and margarine. Butter, oleomargarine, and margarine shall be offered and exposed for sale and sold by weight, and only in units of one-fourth (¼) pound, one-half (½) pound, one (1) pound, or multiples of one (1) pound, avoirdupois weight.

History: En. Sec. 27, Ch. 99, L. 1969.

90-180. Fluid dairy products. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk, shall be packaged for retail sale only in units of one (1) gill, one-half (½) liquid pint, ten (10) fluid ounces, one (1) liquid pint, one (1) liquid quart, one-half (½) gallon, one (1) gallon, one and one-half (1½) gallons, two (2) gallons, two and one-half (2½) gallons, or multiples of one (1) gallon: provided, that packages in units of less than one (1) gill shall be permitted.

History: En. Sec. 28, Ch. 99, L. 1969.

90-181. Flour, corn meal, and hominy grits. When in package form, and when packed, kept, offered, or exposed for sale or sold, wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal, and hominy grits shall be packaged only in units of two (2), five (5), ten (10), twenty-five (25), fifty (50), or one hundred (100) pounds, avoirdupois weight: provided, that packages in units of less than two (2) pounds or more than one hundred (100) pounds shall be permitted.

History: En. Sec. 29, Ch. 99, L. 1969.

90-182. Bulk deliveries sold in terms of weight and delivered by vehicle. When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, (1) the name and address of the vendor, (2) the name and address of the purchaser, and (3) the net weight of the delivery expressed in pounds, and, if the net weight is derived from determinations of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds. One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the sealer, or the chief sealer or deputy sealer, who, if he desires to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser: provided, that, if the purchaser, himself, carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

History: En. Sec. 30, Ch. 99, L. 1969.

90-183. Furnace and stove oil. All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of section 18 [90-170] of this act. In the case of each delivery of such liquid fuel not in package form and in an amount greater than ten (10) gallons in the case of sale by liquid measure or one hundred (100) pounds in the case of sale by weight, there shall be rendered to the purchaser, either (a) at the time of delivery or (b) within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, there shall be clearly stated (1) the name and address of the vendor, (2) the name and address of the purchaser, (3) the identity of the type of fuel comprising the delivery, (4) the unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered, (5) in the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its

binary or decimal subdivisions, and (6) in the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

History: En. Sec. 31, Ch. 99, L. 1969.

90-184. Berries and small fruits. Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half (½) dry pint, one (1) dry pint, or one (1) dry quart: provided, that the marking provisions of section 19 [90-171] of this act shall not apply to such containers.

History: En. Sec. 32, Ch. 99, L. 1969.

90-185. Construction of contracts. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed or defined in sections 2 and 3 [90-154 and 90-155] of this act, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

History: En. Sec. 33, Ch. 99, L. 1969.

90-186. Hindering or obstructing officer—penalties. Any person who shall hinder or obstruct in any way the sealer, the chief sealer, or any one of the deputy sealers, in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty dollars ($20.00) or more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment.

History: En. Sec. 34, Ch. 99, L. 1969.

90-187. Impersonation of officer—penalties. Any person who shall impersonate in any way the sealer, the chief sealer, or any one of the deputy sealers, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

History: En. Sec. 35, Ch. 99, L. 1969.

90-188. Offenses and penalties. Any person who, by himself, or by his servant or agent, or as the servant or agent of another person, performs any one of the acts enumerated in subparagraphs (1) through (9) of this section shall be guilty of a misdemeanor and, upon a first conviction thereof, shall be punished by a fine of not less than twenty dollars ($20.00) or more than two hundred dollars ($200.00), or by imprisonment for not more than three (3) months, or by both such fine and imprisonment. Upon a second or subsequent conviction thereof, he shall be punished by a fine of not less than fifty dollars ($50.00) or more

than five hundred dollars ($500.00), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(1) Use or have in possession for the purpose of using for any commercial purpose specified in section 10 [90-162], sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(2) Use, or have in possession for the purpose of current use for any commercial purpose specified in section 10 [90-162], a weight or measure that does not bear a seal or mark such as is specified in section 14 [90-166], unless such weight or measure has been exempted from testing by the provisions of section 10 [90-162] or by a regulation of the sealer issued under the authority of section 8 [90-160], or unless the device has been placed in service as provided by a regulation of the sealer issued under the authority of section 8 [90-160] of this act: provided, that, any person or persons making use of weighing or measuring devices subject to this act must report to the sealer of weights and measures or his deputies, in writing, the number and location of said weighing or measuring device and must promptly report the installation of any new weighing or measuring device.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(4) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(5) Sell, or offer or expose for sale, less than the quantity he represents of any commodity, thing, or service.

(6) Take more than the quantity he represents of any commodity, thing, or service, when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(7) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or regulation.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(9) Violate any provision of this act or of the regulations promulgated under the provisions of this act for which a specific penalty has not been prescribed.

History: En. Sec. 36, Ch. 99, L. 1969.

Conduct Amounting to False Pretenses

Misdemeanors under former Packaged Commodities Offered for Sale Act and former False Weight and Measures Act were not lesser included offenses of felony of obtaining money by false pretenses since above acts required "sale" while felony statute does not; state has discretionary power to choose under which law it will charge defendant and the fact that two statutes overlap in prohibiting same act does not mean that the defendant can only be prosecuted under statute providing lesser penalty. State v. Lagerquist, 152 M 21, 445 P 2d 910.

90-189. Injunction. The sealer is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this act.

History: En. Sec. 37, Ch. 99, L. 1969.

90-190. Presumptive evidence. For the purposes of this act, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, inclosure, stand, or vehicle in which or from which is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, inclosure, stand, or vehicle.

History: En. Sec. 38, Ch. 99, L. 1969.

90-191. Validity of prosecutions. Prosecutions for violation of any provision of this act are declared to be valid and proper, notwithstanding the existence of any other valid general or specific act of this state dealing with matters that may be the same as or similar to those covered by this act.

History: En. Sec. 39, Ch. 99, L. 1969.

90-192. Separability provision. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby.

History: En. Sec. 40, Ch. 99, L. 1969.

90-193. Repeal of conflicting laws. All laws and parts of laws contrary to or inconsistent with the provisions of this act are hereby repealed.

History: En. Sec. 41, Ch. 99, L. 1969.

90-194. Citation. This act may be cited as the "Weights and Measures Act of Montana."

History: En. Sec. 42, Ch. 99, L. 1969.

Repealing Clause

Section 43 of Ch. 99, Laws 1969 read "Sections 90-101 through 90-119, 90-120 through 90-129, 90-131, 90-133 through 90-143, 90-145 through 90-152, 90-601 through 90-620, 3-202, 3-2432, 3-2433, 11-958, 50-603, 50-408, 50-409, R. C. M., 1947, are repealed."

CHAPTER 2—APPLES, GRADES AND BOXES

Section 90-201. Grades of apples.

90-201. (4265.1) **Grades of apples.** The standard grades of apples for the state of Montana shall be: "Extra fancy or first grade," "Fancy or second grade," "C," "Combination grade," and "Hail grade," and "Orchard-run grade."

(a) to (f). * * * [Same as parent volume.]

(g) "Orchard-run grade" shall consist of apples of one variety, which are mature, hand-picked, clean, sound, free from infection or disease or serious damage and must have fifteen per centum (15%) color requirements characteristic of the variety and shall be marked in block letters not less than one inch in height on both ends of box "Orchard-run grade."

(h) No apples smaller than two and one-fourth (2¼) inches in diameter shall be permitted in any grade.

Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than one inch in height on both ends of box, provided such apples are free from insect pests and diseases.

(i) In order to provide for variations incident to commercial grading and handling a tolerance of ten per centum (10%) for a total of all defects from the standard of the grade shall be allowed.

History: En. Sec. 1, Ch. 138, L. 1931; amd. Sec. 1, Ch. 1, L. 1933; amd. Sec. 1, Ch. 39, L. 1935; amd. Sec. 1, Ch. 89, L. 1939; amd. Sec. 1, Ch. 43, L. 1951; amd. Sec. 1, Ch. 127, L. 1971.

Amendments

The 1971 amendment added "and 'Orchard-run grade'" at the end of the first paragraph; inserted a new subdivision (g); and redesignated former subdivisions (g) and (h) as subdivisions (h) and (i), respectively.

CHAPTER 3—BREAD—STANDARD WEIGHT AND LOAF

(Repealed—Section 3, Chapter 252, Laws of 1957; Section 24, Chapter 16, Laws of 1965; Section 27, Chapter 307, Laws of 1967)

90-301. (4273) Repealed.

Repeal

This section (Sec. 1, Ch. 155, L. 1919; Sec. 2, Ch. 252, L. 1957), relating to standard weights for bread, was repealed by Sec. 24, Ch. 160, Laws 1965. For present law, see sec. 90-178.

90-301.1. Repealed.

Repeal

This section (Sec. 1, Ch. 252, L. 1957), relating to the manufacture of bakery products, was repealed by Sec. 27, Ch. 307, Laws 1967.

90-304. (4276) Repealed.

Repeal

This section (Sec. 4, Ch. 155, L. 1919), relating to the violation of laws pertaining to the manufacture and sale of bread, was repealed by Sec. 27, Ch. 307, Laws 1967.

CHAPTER 6—PACKAGED COMMODITIES OFFERED FOR SALE

Section 90-621. Supplement clause.

90-601 to 90-620. Repealed.

Repeal

Sections 90-601 to 90-620 (Secs. 1 to 20, Ch. 160, L. 1965), relating to packaged commodities offered for sale, were repealed by Sec. 43, Ch. 99, Laws 1969. For present law, see secs. 90-153, 90-163 to 90-165, 90-167, 90-170 to 90-178, 90-184 to 90-186, 90-188 and 90-189.

90-621. Supplement clause. This act is intended to be supplementary, and is not intended to repeal sections 90-140 and 90-141, R. C. M. 1947, or any other law relating to weights and measures.

History: En. Sec. 23, Ch. 160, L. 1965.

Compiler's Notes

Sections 90-140 and 90-141, referred to in this section, were repealed by Sec. 43, Ch. 99, Laws 1969.

Repealing Clause

Section 24 of Ch. 160, Laws 1965 read "Repealing section. Sections 90-130, 90-132, 90-144 and 90-301, R. C. M. 1947, are repealed."

REVISED CODES OF MONTANA

VOLUME 6

Part 2

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 6 (PART 2) OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 6 (PART 2) THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



Copyright © 1965, 1967, 1969, 1971 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1973 by
The Allen Smith Company
Indianapolis, Indiana

NEW LAWS IN VOLUME 6 (Part 2)

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Fiduciary sales, validation, 91-4324.

ENACTED IN 1967

Fiduciary sales, validation, 91-4325.

ENACTED IN 1969

Fiduciary sales, validation, 91-4326.
Proceedings in lieu of probate, 91-5301 to 91-5312.
Surviving spouse's withdrawal of funds from financial institutions without probate proceedings, 91-2212, 91-2213.
Waiver of inheritance tax of surviving spouse, 91-4414.1.
Workmen's compensation, advanced rate for dangerous place of employment, 92-1105.1.

ENACTED IN 1971

Fiduciary sales, validation, 91-4327.
Pneumoconiosis, total disability from, 92-1315.1.

ENACTED IN 1973

Fiduciary sales, validation, 91-4328.
Merit system for employees of workmen's compensation division, 92-121.
Workmen's compensation claim, denial by insurer, 92-615, 92-616.

AMENDMENTS IN VOLUME 6 (Part 2)

Appointment of administrators, 91-1401, 91-1405.
Assignment of decedent's estate to widow or children without probate, 91-5301, 91-5304, 91-5305, 91-5308, 91-5310.
Bonds of administrators and executors, 91-1702.
Conveyance of real estate by executors and administrators, 91-3302.
Escheated estates, 91-502, 91-504 to 91-509, 91-512, 91-520, 91-523.
Final distribution of estate, 91-3906.
Guardians of incompetent veterans, compensation for, 91-4812.
Guardians' sale of realty, 91-5015.
Industrial accident board, 92-101, 92-104, 92-111, 92-118.
Inheritance taxes, 91-4411, 91-4414, 91-4414.1, 91-4415 to 91-4419, 91-4421, 91-4423, 91-4425 to 91-4431, 91-4437 to 91-4440, 91-4442 to 91-4451, 91-4454, 91-4455, 91-4459 to 91-4464.
Intestate succession, 91-403.
Leasing of realty by executor or administrator, 91-3108.
Life estate or joint tenancy, order of termination, 91-4321.
Occupational Disease Act, 92-1303 to 92-1305, 92-1310 to 92-1313, 92-1315, 92-1321.
Public administrators, 91-623, 91-628.
State institutions, gifts to, 91-105, 91-106.
Terms for sale of estate realty, 91-3009.
Trusts continuing after distribution, jurisdiction as to, 91-4201.
Workmen's compensation,
    Beneficiaries eligible, 92-413, 92-417.
    Benefits payable, 92-701.1, 92-702.1, 92-703.1, 92-704.1, 92-706.1, 92-707 to 92-709.1, 92-710.
        Wages on which benefits based, 92-423.1, 92-423.2.

Workmen's compensation (Continued)
Covered employment, 92-204.1, 92-207.1, 92-208, 92-209, 92-410.1, 92-411.
Exempt employment, 92-202.1.
Fees, fines and assessments, use for administrative costs, 92-116.1.
Independent contractor defined, 92-438.1.
Injuries compensable, 92-418, 92-418.1, 92-439 to 92-441, 92-614.
Insurance with private insurer, 92-1004, 92-1005.
Insurance with workmen's compensation division, 92-205, 92-1101 to 92-1105, 92-1108, 92-1121.
Insurer defined, 92-435.
Proceedings on claim, 92-827, 92-834.
Rehabilitation of injured workmen, 92-1403.
Self-insurance plan, 92-901, 92-902.
Time allowed for presentation of claim, 92-601.

MONTANA REVISED CODES

TITLE 91—WILLS, SUCCESSION, PROBATE AND GUARDIANSHIP

Chapter 1. Wills—execution and revocation, 91-105, 91-106.
4. Succession, 91-403.
5. Escheated estates—inheritance by nonresident aliens—disposal of unclaimed property, 91-502, 91-504 to 91-509, 91-512, 91-520, 91-523.
6. Probate proceedings—public administrator, 91-623, 91-628.
14. Persons to whom and order in which letters of administration are granted, 91-1401, 91-1405.
17. Oaths and bonds of executors and administrators, 91-1702.
22. Inventory and appraisement—possession of estate, 91-2212, 91-2213.
30. Sales of real estate and contracts for purchase of land, 91-3009.
31. Mortgaging and leasing real estate, 91-3108.
33. Conveyance of real estate by executors and administrators, 91-3302.
39. Final distribution of estate—discharge of executor or administrator, 91-3906.
42. Settlement of accounts of trustees after distribution of estate, 91-4201.
43. Probate proceedings, miscellaneous—citations—appeals, etc., 91-4321, 91-4324 to 91-4328.
44. Inheritance tax, 91-4411, 91-4414 to 91-4419, 91-4421, 91-4423, 91-4425 to 91-4431, 91-4437 to 91-4440, 91-4442 to 91-4451, 91-4454, 91-4455, 91-4459 to 91-4464.
48. Guardianship of incompetent veterans, minors, and other beneficiaries of the veterans administration, 91-4812.
50. Sale of property by guardians—investment of proceeds, 91-5015.
53. Proceedings in lieu of probate—estates of less than ten thousand dollars, 91-5301 to 91-5312.

CHAPTER 1—WILLS—EXECUTION AND REVOCATION

Section 91-105. State institutions which may take by gift, bequest or grant.
91-106. Persons who may make gifts to state institution.

91-103. (6976) **Will, or part thereof, procured by fraud.**

Undue Influence

Substantial evidence of undue influence was shown where beneficiary under a second will was never close to the testator until learning of his bank account, and importuned upon him, while in a weakened condition, so that the testator rejected his friends. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

The contestant has the burden of showing undue influence. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

In considering undue influence, the court may take into account confidential relationship of person attempting to influence testator, his physical and mental condition as it affects his ability to withstand influence, the unnaturalness of the disposition, and the demands made upon the testator in light of the circumstances. In re Maricich's Estate, 145 M 146, 400 P 2d 873.

91-105. (6978) **State institutions which may take by gift, bequest or grant.** The state of Montana, units of the university of Montana, the state school for the deaf and blind, all institutions in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established, and supported in whole or in part by the state of Montana for any purpose, are hereby empowered

and given the right to accept, receive, take, hold, own, and possess gifts, donations, grants, devises, or bequests of real or personal property from any source whatsoever; and said gifts, donations, grants, bequests, or devises may be made direct to the state of Montana, or in the name of any of said institutions, or to any officer or board of said institutions, or to any person in trust for said institutions; but in the event the same shall be made direct to any such institution, or to any officer or board of any such institution, such gift, donation, grant, devise, or bequest shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used by the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance or improvement of such institution by the state of Montana.

History: En. Sec. 1, Ch. 17, L. 1913; re-en. Sec. 6978, R. C. M. 1921; amd. Sec. 96, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "units of" before "the university of Montana"; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "all institutions in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the Montana state tuberculosis sanitarium, the state asylum for the insane, the state penitentiary" after "school for the deaf and blind."

91-106. (6979) **Persons who may make gifts to state institution.** A donation, gift, grant, bequest, devise, or testamentary disposition of property, real or personal, may be made by any person over the age of eighteen years, of sound mind, to the state of Montana, a unit of the university of Montana, the state school for deaf and blind, an institution in the department of institutions, and any and all institutions now created or established, or which may hereafter be created or established and supported, in whole or in part, by the state of Montana for any purpose. And any person, corporation, or association of persons may make any gift, donation, or grant of property, real or personal, to the state of Montana, or to any of the institutions above-named or referred to; but in the event any gift, donation, grant, devise, or bequest shall be made to any such institution, or to any officer or board of any such institution, the same shall be construed as a gift, donation, grant, devise, or bequest to the state of Montana, and shall be administered and used for the state of Montana for the particular purpose for which the same was given, donated, granted, bequeathed, or devised; and in the event no particular purpose is mentioned in such gift, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of such institution by the state of Montana.

History: En. Sec. 2, Ch. 17, L. 1913; re-en. Sec. 6979, R. C. M. 1921; amd. Sec. 97, Ch. 199, L. 1965.

Amendment

The 1965 amendment inserted "a unit of" before the university of Montana; deleted "the state normal college, the state orphans' home" after "university of Montana"; and substituted "an institution in the department of institutions" for "the state school of mines, the state reform school, the soldiers' home, the state asylum for the insane, the state penitentiary" after "school for deaf and blind."

91-136. (7009) **Children or issue of children of testator, etc.**

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

CHAPTER 2—WILLS--INTERPRETATION

91-202. (7017) **Intention to be ascertained from will.**

Division of Residue

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

91-205. (7020) **Harmonizing various parts.**

Intention of Testator

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

Where sole purpose and object of trust was payment of income for life to testator's wife, mother, sister and son, and such obligations were either fulfilled or no longer possible of fulfillment, trial court properly terminated trust. Testamentary Trust of Child, 153 M 349, 457 P 2d 447.

91-209. (7024) **Words to receive an operative construction.**

Ambiguous Phrase

Holographic will making specific bequests to various persons' children and directing that any residue be divided by percentage "to all of them more or less" was construed to bequeath specific sums to children as classes rather than individually but with children to participate equally as individuals in residue. In re Estate of Jensen, 152 M 495, 452 P 2d 418.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

91-210. (7025) **Intestacy to be avoided.**

Establishment of Will

The presumption in this section does not aid in making a will out of an instrument that showed no testamentary intent other than use of the word "will" but rather spoke in terms of authorizing present acts with respect to personal property. In re Estate of Gasparovich, 158 M 91, 487 P 2d 1148.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482.

CHAPTER 4—SUCCESSION

Section 91-403. Succession to and distribution of estates.

91-403. (7073) **Succession to and distribution of estates.** When any person having title to any estate not limited by marriage contract dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise expressly provided by the laws of Montana, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, only one (1) child, or the lawful issue of one (1) child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, one-third (⅓) to the surviving husband or wife, and the remainder in equal shares to his children, and to the lawful issue of any deceased child, by right of representation; but if there be no child of the decedent living at his death, the remainder goes to all his lineal descendants; and if all the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one (1) child living, or one (1) child living, and the lawful issue of one (1) or more deceased children, then the estate goes in equal shares to the children living, or to the child living, and the issue of the deceased child or children by right of representation.

2. * * * [Same as parent volume.]

3. If there be neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of the decedent, and to the children or grandchildren of any deceased brother or sister, by right of representation.

4. to 7. * * * [Same as parent volume.]

History: Ap. p. Sec. 252, p. 361, Cod. Stat. 1871; amd. Sec. 534, p. 364, L. 1877; re-en. Sec. 534, 2nd Div. Rev. Stat. 1879; re-en. Sec. 534, 2nd Div. Comp. Stat. 1887; amd. Sec. 1852, Civ. C. 1895; re-en. Sec. 4820, Rev. C. 1907, Subd. 8; En. Sec. 535, p. 366, L. 1877; amd. Sec. 1, p. 48, L. 1879; re-en. Sec. 535, 2nd Div. Rev. Stat. 1879; re-en. Sec. 535, 2nd Div. Comp. Stat. 1887; re-en. Sec. 1852, Civ. C. 1895; re-en. Sec. 4820, Rev. C. 1907; re-en. Sec. 7073, R. C. M. 1921; amd. Sec. 1, Ch. 140, L. 1941; amd. Sec. 1, Ch. 60, L. 1947; amd. Sec. 1, Ch. 217, L. 1971. Cal. Civ. C. Sec. 1386.

Compiler's Notes

The case of Brundy v. Canby, 50 M 454, 148 P 315, annotated under this section in the parent volume, was decided in 1915, before the 1941 amendment of this section. The reasons for the decision would no longer apply under the present version of the statute. See the first sentence, subdivision 2 of this section.

Amendments

The 1971 amendment inserted "or grandchildren" in subdivision 3 and made a minor change in phraseology.

Nieces and Nephews

Where decedent was survived only by nieces and nephews and children of deceased nephews, the nieces and nephews took per capita and the children of deceased nephews took per stirpes the share that their fathers would have taken. In re Estate of Brown, 158 M 413, 492 P 2d 914.

Surviving Parent

Where decedent left no surviving wife nor children and his father was dead, his mother would be the sole beneficiary of his estate under this section. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

91-417. (7087) Inheritance by representation.

Degree of Kinship

The right of representation applies to any degree of kinship, and where the nearest heirs were nieces and nephews, the children of deceased nephews were heirs by right of representation. In re Estate of Brown, 158 M 413, 492 P 2d 914.

91-423. Uniform Simultaneous Death Act, etc.

Compiler's Notes

In addition to the jurisdictions noted in the parent volume, Georgia and the Virgin Islands have adopted the Uniform Simultaneous Death Act.

CHAPTER 5—ESCHEATED ESTATES—INHERITANCE BY NONRESIDENT ALIENS—DISPOSAL OF UNCLAIMED PROPERTY

Section 91-502. Title to escheated property vests in state—when.
91-504. Investment and disposition of money and property.
91-505. Unsold personal property, how disposed of—auction sale.
91-506. Unsold real property, how disposed of—auction sale.
91-507. Unclaimed personal property in hands of agent—disposal.
91-508. Sales by state department of revenue, how conducted.
91-509. Court action by claimant of property in hands of state treasurer—limitation of action—judgment.
91-512. Duty of attorney general—employment of special assistant.
91-520. Conditions under which aliens in foreign country may inherit.
91-523. Disposition of money.

91-502. Title to escheated property vests in state—when. Whenever the title to any property, either real or personal, or mixed, fails for any reason including want of heirs or next of kin, such title shall vest in the state of Montana immediately upon the death of the owner without an inquest or other proceeding in the nature of office found, and there shall be no presumption that such owner died leaving heirs or next of kin; provided that in relation to property other than estates, title shall be presumed to have failed whenever the owner, beneficial owner, or person entitled to any such property within this state has been or shall be and remain unknown for a period of twenty (20) successive years, and during such period whenever the whereabouts of such owner, beneficial owner or persons has been or shall be and remain unknown, and during such period whenever any personal property wherever situated has been or shall be and remain unclaimed, then, in such event, such personal property shall escheat to the state.

All sums escheated under the provisions of the Escheated Property Act shall be delivered by the state department of revenue to the state treasurer and deposited by the treasurer in the agency fund; in connection with the recovery of money or property from escheats other than those from estates, the state department of revenue is hereby authorized and directed to deduct the costs incurred in reducing such moneys or property to the possession of the state of Montana, which sum shall not exceed five per centum (5%) of the amount so recovered, except for such other costs and fees as the judgment of escheat shall so direct.

Moneys and properties placed in the agency fund shall be held in trust for a period of ten (10) years prior to deposit in the public school subfund in the trust and legacy fund by the state treasurer; such ten (10) year period being a time within which the owner, beneficial owner, or any person having a right, title, or interest in the property or money escheated may make claim by the institution of an action for the dissolution of the trust in an amount equal to the full amount or value of the property escheated minus the costs and expenses incident to reducing the same to the possession of the state.

In order to ascertain if any person has knowledge of or is in possession of any escheatable property, it shall be lawful for the attorney general or his assistant to obtain discovery on motion in the district court requiring any such person or persons to divulge any information they may have concerning the possession or location of any property subject to escheat, or any other information pertinent to the recovery of such property by the state of Montana or which information may lead to the discovery of such escheatable property.

History: En. Sec. 2, Ch. 184, L. 1943; amd. Sec. 1, Ch. 170, L. 1953; amd. Sec. 110, Ch. 147, L. 1963; amd. Sec. 1, Ch. 156, L. 1971; amd. Sec. 67, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "delivered by the state board of equalization to the state treasurer and" in the first part of the second paragraph; and substituted "the state board of equalization" for "the state treasurer" in the latter part of the second paragraph.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second paragraph.

91-504. Investment and disposition of money and property. The moneys thus deposited may, upon order of the court or judge, be invested, pending the proceedings, in securities of the United States, or of this state, when such investment is for the best interests of the estate. At the final settlement of any estate, if there be no heirs or other claimants thereof, the district judge shall make an order directing the public administrator to sell all property belonging to the estate and pay the proceeds to the county treasurer, who shall keep an account with such estate of all moneys received and paid to him, and the county treasurer shall forthwith remit all of said money to the state department of revenue with a statement as to the estates to which the money belongs. The department shall immediately deliver such money to the state treasurer who shall thereupon deposit such money so received by him in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 184, L. 1943; amd. Sec. 111, Ch. 147, L. 1963; amd. Sec. 2, Ch. 156, L. 1971; amd. Sec. 68, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted "the state board of equalization" for "the state treasurer" near the end of the second sentence; and substituted "The board shall immediately deliver such money to the state treasurer who shall" for "And the state treasurer shall" at the beginning of the third sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" in the second and third sentences.

91-505. Unsold personal property, how disposed of—auction sale. If the personal property in an estate was not sold by the executor or administrator at the final settlement of the estates as by law provided, then it shall be the duty of such executor or administrator to turn over all of such property to the county treasurer, who in turn shall deliver it to the state department of revenue with a statement setting forth the name of the estate to which it belongs, and the state department of revenue must within one (1) year of the receipt of such property cause the same to be sold to the highest bidder at a public auction sale, at the department's office in Helena, Montana. The state department of revenue shall give notice of such sale by publication in a newspaper published in the

city of Helena, Montana, once a week for two (2) successive weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and shall contain a list and description of the stocks, bonds, securities, effects, or other personal property to be sold. All of the expenses of such sale shall be deducted from the proceeds thereof by the state department of revenue and the balance of such proceeds shall be delivered by the department to the state treasurer for deposit in the agency fund of the state of Montana.

History: En. Sec. 5, Ch. 184, L. 1943; amd. Sec. 112, Ch. 147, L. 1963; amd. Sec. 3, Ch. 156, L. 1971; amd. Sec. 69, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in five places; and substituted "shall be delivered by the board to the state treasurer for deposit" for "shall be deposited by the state treasurer" near the end of the section.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-506. Unsold real property, how disposed of—auction sale. If the real property was not sold by the executor or administrator or public administrator at the final settlement of the estate as by law provided, then it shall be the duty of the executor or administrator or public administrator to make and execute to the state of Montana an executor's or administrator's deed and to deliver the same to the county clerk and recorder of the county wherein such real property is situated, and it shall then become the duty of the county clerk and recorder to file and record said deed, without charge, and after being so recorded the county clerk and recorder shall mail the said deed to the state department of revenue which shall make a record thereof and deliver the deed to the state board of land commissioners. Within one (1) year after the receipt of such recorded deed the state board of land commissioners shall cause such property to be sold to the highest bidder at public auction sale, to be held at the courthouse in the county where such real property or any part thereof is situated. The state board of land commissioners shall give notice of such sale by publication in a newspaper published in the county wherein such real estate or any part thereof is situated once a week for two (2) weeks, making in all two (2) publications, the last publication to be at least twenty (20) days prior to the date of such sale. Such notice shall give the time and place of such sale and contain a description of the real property to be sold. All expenses of such sale shall be deducted by the state board of land commissioners from the proceeds thereof and the balance of such proceeds shall be turned over to the state treasurer who shall deposit the same in the agency fund of the state of Montana. The board of land commissioners shall provide the state department of revenue with a statement indicating the sale price, expenses and net proceeds resulting from each such sale.

History: En. Sec. 6, Ch. 184, L. 1943; amd. Sec. 113, Ch. 147, L. 1963; amd. Sec. 4, Ch. 156, L. 1971; amd. Sec. 70, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization which shall make a record thereof and deliver the

deed" near the end of the first sentence; and added the final sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-507. Unclaimed personal property in hands of agent—disposal. Whenever the personal property in an estate remains in the hands of an agent, unclaimed for two (2) years and it appears to the court or judge that it is for the best interests of the estate and those interested therein, such property shall be sold under the order of the court or judge and the proceeds, after deducting the expense of the sale allowed by the court or judge, must be paid to the state department of revenue for deposit into the state treasury, and upon receipt of such proceeds it shall be the duty of the state treasurer to deposit the same in the agency fund of the state of Montana.

History: En. Sec. 7, Ch. 184, L. 1943; amd. Sec. 114, Ch. 147, L. 1963; amd. Sec. 5, Ch. 156, L. 1971; amd. Sec. 71, ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization for deposit" after "must be paid" in the latter part of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-508. Sales by state department of revenue, how conducted. All hereinbefore mentioned sales by the state department of revenue must be at public auction at the department's office. Said sales must be for cash and shall be made to the highest bidder, provided, however, that the department may reject all bids which are disproportionate to the value of the property being sold.

History: En. Sec. 8, Ch. 184, L. 1943; amd. Sec. 6, Ch. 156, L. 1971; amd. Sec. 72, Ch. 391, L. 1973.

Amendments

The 1971 amendment substituted references to the state board of equalization for references to the state treasurer in three places; and deleted "in the state capitol" from the end of the first sentence.

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-509. Court action by claimant of property in hands of state treasurer—limitation of action—judgment. Any persons claiming property in the hands of the state treasurer must bring an action in the district court of Lewis and Clark county, Montana, against the state treasurer. In such action one copy of the complaint and summons must be served upon the state treasurer, one must be served upon the attorney general and one must be served upon the director of revenue.

Such action shall be prosecuted subject to all of the provisions of the statutes of this state in relation to civil actions generally, including the right of either party to appeal to the supreme court of the state of Montana. Such action must be brought within two (2) years from the date on which the money or property is received by the state treasurer, saving, however, to infants and persons of unsound mind, or citizens of the United States beyond the limits of the United States, the right to commence their action at any time within the time limited or two (2) years after their respective disabilities cease.

The judgment of the court in such action shall determine and fix the amount of inheritance tax, if any, which is due from said claimant to the state of Montana upon the money or property claimed and none of said money or property shall be turned over to said claimant until said inheritance tax is paid. The state department of revenue shall issue its interlocutory certificate showing the amount of said inheritance tax due, if any, and shall have the right to file objections and be heard upon the final determination of said tax.

History: En. Sec. 9, Ch. 184, L. 1943; amd. Sec. 1, Ch. 79, L. 1945; amd. Sec. 73, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "director of revenue" for "state board of equalization" at the end of the first paragraph; and substituted "department of revenue" for "board of equalization" in the second sentence of the third paragraph.

91-512. Duty of attorney general—employment of special assistant. The attorney general of the state of Montana shall be the legal adviser in connection with all escheated property matters and it shall be the duty of the attorney general to make investigations and conduct inquiries to determine whether there is property in the state of Montana which should escheat to the state of Montana, and to take all steps necessary to secure such escheat, and for this purpose the attorney general is authorized and empowered to employ a special assistant and incur necessary expenses subject to appropriation limitations.

History: En. Sec. 12, Ch. 184, L. 1943; amd. Sec. 1, Ch. 193, L. 1953; amd. Sec. 115, Ch. 147, L. 1963; amd. Sec. 1, Ch. 377, L. 1971.

Amendments

The 1971 amendment substituted "and incur necessary expenses subject to appropriation limitations" at the end of the section for "at a salary not to exceed six thousand dollars ($6,000.00) per annum together with actual, necessary expenses while engaged in outside work in connection with the duties of his office as defined by law."

91-520. Conditions under which aliens in foreign country may inherit. 1. No person shall receive money or property, save and except mining property as an heir, devisee and/or legatee of a deceased person leaving an estate or portion thereof in the state of Montana, if such heir, devisee and/or legatee, at the time of the death of said deceased person, is not a citizen of the United States and is a resident of a foreign country at the time of the death of said intestate or testator, unless, reciprocally, the foreign country in question would permit the transfer to an heir, devisee and/or legatee residing in the United States, of property left by a deceased person in said foreign country.

2. to 6. * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 104, L. 1939; amd. Sec. 1, Ch. 31, L. 1951; amd. Sec. 1, Ch. 144, L. 1953; amd. Sec. 55, Ch. 100, L. 1973.

Amendments

The 1973 amendment deleted "as provided in section 25, article III, of the constitution of the state of Montana" after "except mining property" in subsection 1.

Injunction

Residents of Romania could not enjoin enforcement of statute while probate case was at intermediate stage since state is free to fashion procedure for applying statute in manner not offensive to constitution. Gorun v. Fall, 287 F Supp 725, affirmed, 393 US 398, 21 L Ed 2d 628, 89 S Ct 678.

Reciprocity

Pursuant to Rule 44.1, M. R. Civ. P., trial court has power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance exists between citizens of state and citizens of foreign country. In re Estate of Giurgiu, 155 M 18, 466 P 2d 83, appeal dismissed 399 US 901, 26 L Ed 2d 555, 90 S Ct 2195.

91-523. Disposition of money. All money, including that realized from the sale or sales of property delivered to the county by an executor or administrator, under the provisions of this act shall, immediately upon its receipt by the county treasurer be delivered to the state department of revenue which shall immediately deliver same to the state treasurer and by him deposited in the agency fund of the state of Montana.

History: En. Sec. 4, Ch. 104, L. 1939; amd. Sec. 1, Ch. 18, L. 1947; amd. Sec. 116, Ch. 147, L. 1963; amd. Sec. 7, Ch. 156, L. 1971; amd. Sec. 74, Ch. 391, L. 1973.

Amendments

The 1971 amendment inserted "to the state board of equalization which shall immediately deliver same" before "to the state treasurer" in the latter part of the section.

The 1973 amendment substituted "department of revenue" for "board of equalization."

CHAPTER 6—PROBATE PROCEEDINGS—PUBLIC ADMINISTRATOR

Section 91-623. Estates less than fifteen hundred dollars ($1,500).
91-628. Compensation of public administrator.

91-623. (10012) **Estates less than fifteen hundred dollars ($1,500).** If the statement or statements furnished the public administrator in accordance with the provisions of section 91-621 show that the aggregate market value of the estate of such deceased person is fifteen hundred dollars ($1,500) or less in value, then, upon demand of the public administrator, the person, firm, bank, or corporation holding, controlling, or owning the same, or any part thereof, shall turn over, endorse, or surrender the same to such public administrator at once, without the issuance of letters of administration to him. The public administrator shall, upon receipt of the money, evidence of indebtedness, or other personal property, issue a receipt to the person, firm, bank, or corporation delivering the same to him fully describing the property received. Such receipt, signed by the public administrator, shall fully discharge the person, firm, bank, or corporation receiving the same from all further liability to the estate of said deceased person, to the amount of money or for the property set out in said receipt.

History: En. Sec. 3, Ch. 134, L. 1909; re-en. Sec. 10012, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1929; amd. Sec. 1, Ch. 222, L. 1969.

Amendments

The 1969 amendment substituted "fifteen hundred dollars ($1,500)" for "five hundred dollars ($500.00)" after "estate of such deceased person is" in the first sentence.

91-628. (10017) **Compensation of public administrator.** The public administrator shall receive as full compensation for his services, including attorney's fees, a commission of fifteen per cent (15%) of the total amount of money received by him in any estate provided for in this

act; provided, that in no case shall the compensation be less than twenty-five dollars ($25).

History: En. Sec. 8, Ch. 134, L. 1909; re-en. Sec. 10017, R. C. M. 1921; amd. Sec. 1, Ch. 3, L. 1969.

Amendments

The 1969 amendment raised the administrator's minimum compensation from "five dollars" to "twenty-five dollars."

CHAPTER 7—PROBATE PROCEEDINGS—GENERAL JURISDICTION OF DISTRICT COURT

91-701. (10018) Jurisdiction of the court over the estate, etc.

Residence of Decedent

County where intestate decedent was domiciled had sole and exclusive jurisdiction over her estate and where order from another county recited the correct domicile but nevertheless issued letters of administration, the order was void on its face and subject to both collateral and direct attack. In re Estate of Brown, 156 M 170, 477 P 2d 882.

CHAPTER 9—PROBATE PROCEEDINGS—CONTESTING PROBATE OF WILLS

91-901. (10032) Contestant to file grounds of contest, etc.

Burden of Proof—Undue Influence

Directed verdict upholding contested will was improper where there was evidence that testator was in a long period of declining physical and mental health due to terminal cancer and sedation, was influenced by a mutual funds salesman, and executed four wills within a six-month period, all of them disinheriting his natural children, making dispositions at great variance with previous wills, and tending to erode the estate. Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388, distinguishing In re Estate of Cocanougher, 141 M 16, 375 P 2d 1009.

Evidence Admissible — Testamentary Capacity

Hospital records of testator's terminal illness, during which he executed contested will, were relevant on issue of testamentary capacity and should have been admitted in will contest. Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388.

CHAPTER 11—PROBATE PROCEEDINGS—CONTESTING WILLS AFTER PROBATE

91-1101. (10042) The probate may be contested within six months.

Issuance of Citation

Petition contesting will was properly dismissed where the citation was not issued within the statutory period following admission of will to probate. In re Estate of Willner, 147 M 538, 416 P 2d 24, 25.

91-1102. (10043) Citation to be issued to parties interested.

Timely Issuance of Citation

Petition contesting will was properly dismissed where the citation was not issued within statutory period following admission of will to probate. In re Estate of Willner, 147 M 538, 416 P 2d 24, 25.

CHAPTER 13—PROBATE PROCEEDINGS—EXECUTORS AND ADMINISTRATORS—ISSUANCE OF LETTERS TESTAMENTARY AND OF ADMINISTRATION

91-1301. (10056) To whom letters on proved will to issue.

Duty of Court

Statute gives power to nominate executor to testator, so that court must appoint as executor person named in will unless

he is incompetent under 91-1302. In re Estate of Graf, 150 M 577, 437 P 2d 371.

References

In re Maricich's Estate, 145 M 146, 400 P 2d 873.

91-1302. (10057) **Who are incompetent as executors or administrators, etc.**

Causes for Disqualifying

Fact that named executors may have used undue influence in obtaining property of testator before death, thereby giving rise to claim in behalf of estate against executors, is not in itself evidence of want of integrity such as will disqualify executors. In re Estate of Graf, 150 M 577, 437 P 2d 371.

CHAPTER 14—PERSONS TO WHOM AND ORDER IN WHICH LETTERS OF ADMINISTRATION ARE GRANTED

Section 91-1401. Order of persons entitled to administer—partner not to administer.
91-1405. Who are incompetent to act as administrators.

91-1401. (10068) **Order of persons entitled to administer—partner not to administer.** Administration of estate of all persons dying intestate and of all persons dying testate without appointing an executor who qualified for appointment must be granted to some one or more of the persons hereinafter mentioned or to persons nominated by them, and they are respectively entitled to preference thereto in the following order the relatives of the decedent being entitled to priority only when they are entitled to succeed to the estate or some portion thereof;

1. The surviving husband or wife.
2. The children.
3. The father or mother.
4. The brothers.
5. The sisters.
6. The grandchildren.
7. The next of kin entitled to share in the distribution of the estate.
8. A beneficiary under the will of the decedent.
9. The public administrator.
10. A creditor.
11. Any person legally competent.

If the decedent was a member of a partnership at the time of his decease, the surviving partner must in no case be appointed administrator of the estate.

History: En. Sec. 55, p. 253, L. 1877; re-en. Sec. 55, 2nd Div. Rev. Stat. 1879; amd. Sec. 55, 2nd Div. Comp. Stat. 1887; amd. Sec. 2430, C. Civ. Proc. 1895; re-en. Sec. 7432, Rev. C. 1907; re-en. Sec. 10068, R. C. M. 1921; amd. Sec. 1, Ch. 219, L. 1939; amd. Sec. 1, Ch. 68, L. 1969. Cal. C. Civ. Proc. Sec. 1365.

Amendments

The 1969 amendment inserted "and of all persons * * * qualified for appointment," after "persons dying intestate" and "or to persons nominated by them" after "hereinafter mentioned" and added "the relatives of the decedent * * * some portion thereof" at the end of the first paragraph; deleted " , or some competent person whom he or she may request to have appointed" from paragraph 1; inserted new paragraph 8, and redesignated former paragraphs 8 to 10 as new paragraphs 9 to 11.

Creditor as Administrator

On claim for unpaid hospital expenses of decedent, proper remedy for hospital would have been to apply for letters of administration as creditor. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

91-1405. (10072) **Who are incompetent to act as administrators.** No person is competent or entitled to serve as administrator or administratrix who is:

1. * * * [Same as parent volume.]

2. Not a bona fide resident of the state; but if a person otherwise entitled to serve is not a resident of the state, he may nominate a resident of the state to serve as administrator, and the court or judge must order letters issued to the nominee.

3. and 4. * * * [Same as parent volume.]

History: En. Sec. 59, p. 254, L. 1877; re-en. Sec. 59, 2nd Div. Rev. Stat. 1879; re-en. Sec. 59, 2nd Div. Comp. Stat. 1887; amd. Sec. 2434, C. Civ. Proc. 1895; amd. Sec. 1, p. 137, L. 1899; re-en. Sec. 7436, Rev. C. 1907; re-en. Sec. 10072, R. C. M. 1921; amd. Sec. 1, Ch. 59, L. 1969. Cal. C. Civ. Proc. Sec. 1369.

Amendments

The 1969 amendment deleted "and either the husband, wife, or child, or parent, or brother, or sister of the deceased, he may request the court or judge to appoint a resident of the state to serve as administrator, and such person may be appointed, but no other nonresident than a surviving husband, wife, or child, or parent, or brother, or sister shall have such right to request an appointment, and" after "resident of the state," inserted, in place thereof, "he may nominate a resident of the state to serve as administrator," substituted "nominee" for "applicant" after "letters issued to the" and deleted "entitled thereto under the provisions of this chapter" at the end of paragraph 2.

CHAPTER 17—OATHS AND BONDS OF EXECUTORS AND ADMINISTRATORS

Section 91-1702. Bond of administrators and executors, form and requirement of—when not required.

91-1702. (10088) **Bond of administrators and executors, form and requirement of—when not required.** Every person to whom letters testamentary or of administration are directed to issue must, before receiving them, execute a bond to the state of Montana, with two (2) or more sufficient sureties or a sufficient surety company, to be approved by the district court, or a judge thereof. In form, the bond must be joint and several, and the penalty must not be less than the value of the personal property and the annual rents and profits of real property belonging to the estate, nor more than twice the value of such personal property and rents and profits; provided that upon written request of all the heirs, devisees, or legatees and all being over eighteen (18) years of age and entitled to all of the estate upon distribution, the court may in its discretion fix the penalty of the bond at any sum less than the value of the personal property, and the annual rents and profits of the real property belonging to the estate; and provided further that if, at the time of hearing any application for letters testamentary or of administration, it satisfactorily appears to the court or judge that the assets of the estate for which such letters of administration or letters testamentary are sought do not warrant the necessity of a bond on the part of the applicant, the

court or judge may in its discretion order such letters to issue without bond; but such administrator or executor may at any time afterward, if it appear from any cause necessary or proper, be required to file a bond as in other cases.

History: En. Sec. 75, p. 257, L. 1877; re-en. Sec. 75, 2nd Div. Rev. Stat. 1879; re-en. Sec. 75, 2nd Div. Comp. Stat. 1887; amd. Sec. 2471, C. Civ. Proc. 1895; re-en. Sec. 7452, Rev. C. 1907; amd. Sec. 1, Ch. 173, L. 1919; re-en. Sec. 10088, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1937; amd. Sec. 1, Ch. 119, L. 1963; amd. Sec. 17, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1388.

Amendments

The 1971 amendment reduced the age specified in the first proviso to the second sentence from 21 to 18 years, and made minor changes in style.

CHAPTER 21—REMOVAL AND SUSPENSION OF EXECUTORS AND ADMINISTRATORS

91-2101. (10124) Suspension of powers of executor.

Causes for Removal

Administratrix who failed to file inventory and appraisement within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

91-2102. (10125) Executor to have notice of his suspension, etc.

Causes for Removal

Administratrix who failed to file inventory and appraisement within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

CHAPTER 22—INVENTORY AND APPRAISEMENT—POSSESSION OF ESTATE

Section 91-2212. Funds on deposit at financial institution—surviving spouse may withdraw—affidavit required.
91-2213. Affidavit sufficient to require release of funds—liability of financial institutions and their representatives discharged.

91-2201. (10129) Inventory to be returned, including the homestead.

Causes for Removal

Administratrix who failed to file inventory and appraisement within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

91-2212. Funds on deposit at financial institution—surviving spouse may withdraw—affidavit required. Whether a person dies testate or intestate, and irrespective of the character of his or her property, if the value of the estate does not exceed five thousand dollars ($5,000), the spouse of the decedent may collect from any bank, banking institution,

savings and loan association or credit union, any moneys held to the credit of the decedent not to exceed the total sum of one thousand dollars ($1,000), without procuring letters testamentary or of administration, upon furnishing such bank or organization with an affidavit showing the right of the affiant to receive such money.

History: En. Sec. 1, Ch. 119, L. 1969.

Title of Act

An act providing that a surviving spouse may withdraw funds from financial institutions without probate proceedings in certain cases.

91-2213. Affidavit sufficient to require release of funds—liability of financial institutions and their representatives discharged. The receipt of such affiant or affiants shall constitute sufficient acquittance for the payment of money made pursuant to the provisions of this act, and shall fully discharge such person, representative, officer, bank, institution, corporation or body from any further liability with reference thereto, without the necessity of inquiring into the truth of any of the facts stated in the affidavit. But such payment shall not preclude administration of the estate of the decedent when necessary to enforce payment of the decedent's debts.

History: En. Sec. 2, Ch. 119, L. 1969.

CHAPTER 27—CLAIMS AGAINST ESTATE

91-2701. (10170) Notice to creditors, etc.

Time for Presenting Claims

All claims against estate arising from contract must be presented to executor within four months of first publication of notice to creditors. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

91-2704. (10173) Time within which claims against an estate, etc.

Actual Notice Unnecessary

Bank which failed to present claim on note against decedent's estate within statutory time was barred where notice by publication appeared in only newspaper in community of 1,800 citizens of which both bank and decedent were residents; bank's contention that it received no actual notice which could have been accomplished with ease and that to bar claim under such circumstances was deprivation of property without due process of law was rejected. Baker Nat. Bank v. Henderson, 151 M 526, 445 P 2d 574.

Contract Claims

All claims against estate arising from contract must be presented to executor within four months of first publication of notice to creditors. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

Mechanic's Lien

A mechanic's lien under sections 45-501 to 45-512 is not a claim arising upon a contract within the meaning of this section and the lien is not lost because creditor's claim is not filed. Hammer v. Chapin, 256 F Supp 818, 820.

91-2709. (10178) Limitation of actions on rejected claim.

Exclusive Nature of Procedure

Rule 41(e), M. R. Civ. P., providing for dismissal of action for failure to serve summons as provided therein, does not apply to service of summons in suit on rejected claim in probate which is governed exclusively by statute providing for contesting rejected claims in probate. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Suit after Discharge

Summons, in suit on rejected claim filed within three-month statutory limit, served after discharge in probate was not substantial compliance with statutory require-

ment to "bring suit" within three months of rejection of claim. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Variance between Claim and Suit

Claim sued upon must be within scope of claim presented to executor, so that action for breach of contract to bequeath could not be predicated upon creditor's claim to recover debt. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

91-2711. (10180) **Claims must be presented before suit.**

Claim for Hospital Expenses

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

Variance between Claim and Suit

Claim sued upon must be within scope of claim presented to executor, so that action for breach of contract to bequeath could not be predicated upon creditors' claim to recover debt. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

CHAPTER 28—SALES OF PROPERTY OF ESTATE IN GENERAL—BORROWING MONEY—SALES OF CERTAIN PERSONAL PROPERTY

91-2801. (10195) **Estate chargeable with debts—no priority.**

Hospital Expenses

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

CHAPTER 30—SALES OF REAL ESTATE AND CONTRACTS FOR PURCHASE OF LAND

Section 91-3009. Contents of order of sale—conditions of sale—public or private.

91-3009. (10218) **Contents of order of sale—conditions of sale—public or private.** The order of sale must describe the lands to be sold and the terms of sale which may be for cash, or for part cash and the balance on a credit not exceeding five (5) years where the sales price is five thousand dollars ($5,000) or less, payable in gross or in installments, with interest, as the court or judge may direct. For sales where the sales price exceeds five thousand dollars ($5,000), deferred payments may be extended not to exceed twenty (20) years. The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court or judge otherwise specially directs. If it appears that any part of such real estate has been devised, and not charged in such devise with the payment of debts or legacies, the court or judge must order the remainder to be sold before that so devised. Every such sale must be ordered to be made at public auction, unless, in the opinion of the court or judge, it would benefit the estate to sell the whole or some part of such real estate at private

sale. The court or judge may, if the same is asked for in the petition, order or direct such real estate, or any part thereof, to be sold at either public or private sale, if the executor or administrator shall deem it to be most beneficial for the estate. If the executor or administrator neglects or refuses to make a sale under the order, and as directed therein, he may be compelled to sell, by order of the court or judge, made on motion, after due notice by any party interested.

History: En. Sec. 194, p. 290, L. 1877; re-en. Sec. 194, 2nd Div. Rev. Stat. 1879; re-en. Sec. 194, 2nd Div. Comp. Stat. 1887; amd. Sec. 2678, C. Civ. Proc. 1895; re-en. Sec. 7569, Rev. C. 1907; re-en. Sec. 10218, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1943; amd. Sec. 1, Ch. 64, L. 1969. Cal. C. Civ. Proc. Sec. 1544.

Amendments

The 1969 amendment inserted "where the sales price is five thousand dollars ($5,000) or less," after "not exceeding five (5) years" in the first sentence; and inserted the present second sentence.

CHAPTER 31—MORTGAGING AND LEASING REAL ESTATE

Section 91-3108. Leasing—procedure to procure order—provisions and terms—execution—effect.

91-3108. (10256) **Leasing—procedure to procure order—provisions and terms—execution—effect.** To obtain an order to lease the realty, the proceedings to be taken and the effect thereof shall be as follows:

1. to 3. * * * [Same as parent volume.]

4. At the time and place appointed in the order to show cause, or such other time and place to which the hearing may be postponed, the court or judge having first received satisfactory proof of personal service or publication of the order to show cause, must proceed to hear the petition, and any objections that may be filed or presented thereto. Upon such hearing, witnesses may be compelled to attend and testify in the same manner and with like effect as in other cases, and the court or judge may, in its or his discretion, appoint one or more, not exceeding three, disinterested persons to appraise the rental value of the premises, and direct that a reasonable compensation for their services, not to exceed five dollars per day, be paid by the estate. If, after a full hearing, the court or judge is satisfied that it will be for the advantage of the estate to lease the whole or any portion of the real estate, an order must be made authorizing, empowering, and directing the executor or administrator to make such lease. The order may prescribe the minimum rental to be received for the premises, and the period of the lease, which must in no case be longer than for ten years, except that a lease or contract providing for the exploration of the premises for oil, gas, coal or hydrocarbons may provide for a term of ten years and for as long thereafter as oil, gas, coal, or hydrocarbons shall be produced in commercial quantities, and may prescribe the other terms and conditions of such lease.

5. and 6. * * * [Same as parent volume.]

History: En. Sec. 2722, C. Civ. Proc. 1895; re-en. Sec. 7602, Rev. C. 1907; re-en. Sec. 10256, R. C. M. 1921; amd. Sec. 1, Ch. 113, L. 1923; amd. Sec. 1, Ch. 156, L. 1953; amd. Sec. 1, Ch. 217, L. 1973. Cal. C. Civ. Proc. Sec. 1579.

Amendments

The 1973 amendment inserted "coal" in two places in the last sentence of subdivision 4.

CHAPTER 32—GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

91-3202. (10258) **Executors and administrators may sue and be sued.**

Failure To Join Beneficiary

Although proper procedure was followed in bringing suit against administrator of estate without joining all beneficiaries, conduct of parties in perpetrating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit. Selway v. Burns, 150 M 1, 429 P 2d 640.

CHAPTER 33—CONVEYANCE OF REAL ESTATE BY EXECUTORS AND ADMINISTRATORS

Section 91-3302. Petition for executor or administrator to make conveyance and notice of hearing.

91-3302. (10269) **Petition for executor or administrator to make conveyance and notice of hearing.** On the presentation of a verified petition by the executor or administrator, or by any person claiming to be entitled to such conveyance from an executor or administrator, setting forth the facts upon which the claim is predicated, the court, or a judge thereof, shall appoint a time and place for hearing the petition, and shall order notice thereof to be served on the executor or administrator personally when he is not the petitioner, and a copy thereof served upon each known heir, or, in the event of minor or incompetent heirs, upon the duly appointed and qualified guardian for such incompetent or minor, not less than twenty (20) days prior to the date of said hearing; or the court may order notice by publication for four (4) successive weeks in such newspaper in the county as the court may designate, provided, however, that if such contract was of record at the date of the death of the person executing such contract, then, in that event, notice of such hearing may be given by serving such notice on the executor or administrator personally, when he is not the petitioner, and posting such notice in three (3) public places in the county where the court is held, for at least ten (10) days prior to the day fixed for the hearing; provided, further, that if the written consent of all the known heirs over the age of eighteen (18) years and the guardian, duly authorized, of all minor or incompetent heirs be obtained and filed in the court before which said hearing is pending, then no other or further notices shall be required.

History: En. Sec. 237, p. 302, L. 1877; re-en. Sec. 237, 2nd Div. Rev. Stat. 1879; re-en. Sec. 237, 2nd Div. Comp. Stat. 1887; re-en. Sec. 2751, C. Civ. Proc. 1895; re-en. Sec. 7615, Rev. C. 1907; re-en. Sec. 10269, R. C. M. 1921; amd. Sec. 1, Ch. 173, L. 1937; amd. Sec. 18, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1598.

Amendments

The 1971 amendment reduced the age specified in the final proviso from 21 to 18 years, and made minor changes in style.

CHAPTER 34—LIABILITIES AND COMPENSATION OF EXECUTORS AND ADMINISTRATORS

91-3407. (10287) **Compensation of executors and administrators.**

Neglect and Mismanagement of Estate

Removed administratrix and her attorneys who had failed to make money from sale of property available to heirs, failed to provide for interest on money from sale of property for benefit of estate, lost in-

heritance tax credit and allowed tax penalties to be assessed against estate were properly awarded fees less than those provided for by statute which applies only to fees for successful completion of estate. In re Estate of Smith, 149 M 326, 426 P 2d 575.

CHAPTER 35—ACCOUNTING AND SETTLEMENT BY EXECUTORS AND ADMINISTRATORS

91-3501. (10288) Exhibit of receipts and disbursements, etc.

Inventory of Assets

Administratrix who failed to file inventory and appraisement within three months after appointment, failed to file first accounting within six months after appointment, failed to make money from sale of property available to heirs, failed to provide estate with interest on money from sale of property, lost inheritance tax credit and allowed tax penalties to be assessed against estate was properly removed. In re Estate of Smith, 149 M 326, 426 P 2d 575.

91-3507. (10294) Repealed.

Repeal

Section 91-3507 (Sec. 260, p. 307, L. 1877), relating to the rendering of accounts after notice to creditors, was repealed by Sec. 1, Ch. 272, Laws 1969.

91-3516. (10303) Settlement of account to be conclusive, etc.

Effect of Fraud

Final decree of distribution and discharge in probate will not be set aside on ground of inadvertence or fraud under statute or Rule 60(b), M. R. Civ. P., in absence of manifest abuse of court's discretion to grant relief thereunder in case where moving party had every opportunity to protect his claim in probate and failed to do so. Werning v. McFarland, 149 M 137, 423 P 2d 851.

CHAPTER 36—DEBTS OF THE ESTATE—PAYMENT OF

91-3601. (10307) Order of payment of debts.

Circumvention of Payment Priorities

In action to recover unpaid hospital expenses from decedent's heirs at law, who had distributed assets of decedent's estate without having administrator appointed, trial court improperly granted relief to plaintiff hospital since it could not sue upon its claim until it first presented such claim to administrator; thus, proper remedy would have been for hospital to apply for letters of administration as creditor, and hospital's attempted remedy circumvented statutory priorities for payment of debts. Daughters of Jesus v. Gee, 153 M 342, 457 P 2d 471.

91-3606. (10312) Provision for disputed and contingent claims.

Summons after Discharge

Summons, in suit on rejected claim filed within three-month statutory limit, served after discharge in probate was not substantial compliance with statutory requirement to "bring suit" within three months of rejection of claim and relieved executrix of statutory duty to pay amount of disputed claim into court. Werning v. McFarland, 149 M 137, 423 P 2d 851.

CHAPTER 39—FINAL DISTRIBUTION OF ESTATE —DISCHARGE OF EXECUTOR OR ADMINISTRATOR

Section 91-3906. Final settlement, order and discharge.

91-3906. (10332) Final settlement, order and discharge. When the estate has been fully administered, and it is shown by the executor or

administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered up, under the order of the court or judge, all the property of the estate to the parties entitled, and performed all the acts lawfully required of him, the court or judge must make an order discharging him from all liability to be incurred thereafter. If the estate has not been distributed in its entirety, and the executor or administrator discharged within two (2) years from the date of initial appointment of the executor or administrator, the clerk of the district court shall advise the district judge thereof and the judge shall notify the executor, administrator and his attorney of record to appear before the court and show cause why the estate has not been distributed in its entirety and the executor or administrator discharged.

If after such show cause hearing, the judge determines that good cause does not exist for failure to distribute the estate, the judge shall make an order directing that the estate be distributed in its entirety within thirty (30) days and that the executor or administrator and his attorney shall receive no fee or other compensation from the estate.

History: En. Sec. 2886, C. Civ. Proc. 1895; re-en. Sec. 7696, Rev. C. 1907; re-en. Sec. 10332, R. C. M. 1921; amd. Sec. 1, Ch. 260, L. 1971. Cal. C. Civ. Proc. Sec. 1697.

Amendments

The 1971 amendment added the second sentence to the first paragraph; and added the second paragraph.

CHAPTER 42—SETTLEMENT OF ACCOUNTS OF TRUSTEES AFTER DISTRIBUTION OF ESTATE

Section 91-4201. Court not to lose jurisdiction of trusts by distribution—accounts of trustees.

91-4201. (10352) **Court not to lose jurisdiction of trusts by distribution—accounts of trustees.** Where any trust has been created by or under any will to continue after distribution, the district court shall not lose jurisdiction of the estate by final distribution, but shall retain jurisdiction thereof for the purpose of the settlement of accounts under the trust as provided in Title 86.

History: En. Sec. 2900, C. Civ. Proc. 1895; re-en. Sec. 7698, Rev. C. 1907; re-en. Sec. 10352, R. C. M. 1921; amd. Sec. 2, Ch. 24, L. 1969. Cal. C. Civ. Proc. Sec. 1699.

Amendments

The 1969 amendment added "as provided in Title 86" at the end of the first sentence; and deleted the former second through the fifth sentences. For text, see parent volume.

CHAPTER 43—PROBATE PROCEEDINGS, MISCELLANEOUS—CITATIONS—APPEALS, ETC.

Section 91-4321. Termination of life estate or joint tenancy.
91-4324. Validation of fiduciary sales before 1965.
91-4325. Validation of fiduciary sales before 1967.
91-4326. Validation of fiduciary sales before 1969.
91-4327. Validation of fiduciary sales before 1971.
91-4328. Validation of fiduciary sales before 1973.

91-4306. (10360) **Citation—how issued.**

Refusal to Issue

Where clerk of court mistakenly refused to issue citation pursuant to this section, resulting in lapse under statute

of limitations, it was improper for the district judge to issue nunc pro tunc order backdating such citation. State ex rel. Craig v. District Court, 153 M 427, 458 P 2d 608.

91-4321. (10375) Termination of life estate or joint tenancy. (1) to (3) * * * [Same as parent volume.]

(4) If no proceeding has been had or is pending to determine whether any inheritance tax is payable by reason of such death, the court or judge may determine in a proceeding under this section whether an inheritance tax is due by reason of the death of such person, and the amount thereof, if any. If it is desired to have the court or judge determine the liability for inheritance tax, and the amount thereof, appropriate allegations to that effect shall be included in the petition, and a copy of such petition, and notice of the time and place of hearing, shall be mailed to the state department of revenue by the clerk of the court, at least ten (10) days before the date set for hearing.

History: En. Sec. 2930, C. Civ. Proc. 1895; re-en. Sec. 7721, Rev. C. 1907; re-en. Sec. 10375, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1943; amd. Sec. 75, Ch. 391, L. 1973. Cal. C. Civ. Proc. Sec. 1723.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the end of subsection (4).

91-4324. Validation of fiduciary sales before 1965. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to the effective date of this act, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 60, L. 1965.

Title of Act

An act validating deeds and conveyances in sales of land and personal property heretofore made by trustees, executors, administrators and guardians, curing defects and irregularities in such sales, containing a repealing clause.

Repealing Clause

Section 2 of Ch. 60, Laws 1965 repealed all acts and parts of acts in conflict therewith.

91-4325. Validation of fiduciary sales before 1967. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1967, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such

sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and, in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 182, L. 1967.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1967, curing defects and irregularities in such sales.

91-4326. Validation of fiduciary sales before 1969. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1969, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's, or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 75, L. 1969.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1969, curing defects and irregularities in such sales.

91-4327. Validation of fiduciary sales before 1971. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1971, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed, or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle

such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 98, L. 1971.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1971, curing defects and irregularities in such sales.

91-4328. Validation of fiduciary sales before 1973. All sales, provided no action is now pending to set aside such deed or conveyance, by trustees, executors, administrators and guardians which previous to January 1, 1973, were made to purchasers for a valuable consideration, which consideration has been paid by such purchasers in good faith, and such sales shall not have been set aside by the district or probate court having jurisdiction thereof, shall be sufficient to sustain a trustee's, executor's, administrator's or guardian's deed or conveyance to such purchaser, and in case such deed or conveyance shall not have been given, shall entitle such purchaser to such deed or conveyance; and such deed or conveyance, if now executed or when executed, shall be sufficient to convey to such purchaser all the title that such beneficiary, decedent or ward had in said real or personal property; and all irregularities in obtaining the order of the court for such sale, and all irregularities or defects in making or conducting such sale by said trustee, executor, administrator or guardian, shall be disregarded, and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 81, L. 1973.

Title of Act

An act validating deeds and conveyances in sales of land and personal property made by trustees, executors, administrators and guardians prior to January 1, 1973, curing defects and irregularities in such sales.

CHAPTER 44—INHERITANCE TAX

Section 91-4411. Estate tax.
91-4414. Exemptions from first $25,000.
91-4414.1. Discretionary waiver of inheritance tax of surviving spouse.
91-4415. When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.
91-4416. Discount—interest.
91-4417. Powers of representative in collection and payment of tax—collection from legatees or distributees.
91-4418. Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.
91-4419. Bond for deferred payment of tax.
91-4421. Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given department of revenue—amount of tax to be retained on delivery of assets—penalties.

91-4423. Jurisdiction of district court—notice to department of revenue required before hearing.
91-4425. Determination of tax due from estate of nonresident decedent—application—appeals.
91-4426. Determination when application not made.
91-4427. Special appraiser.
91-4428. Duties, powers and compensation of appraisers.
91-4429. Hearing by the court.
91-4430. Notice of hearing.
91-4431. Commissioner of insurance to value future estates, etc.
91-4437. Order determining tax—contents.
91-4438. Rehearing within sixty days.
91-4439. Reappraisement in the district court within one year.
91-4440. Collection of unpaid taxes.
91-4442. Special administration to determine tax where transfer made in contemplation of death.
91-4443. Public administrator's duty to investigate concerning tax—compensation.
91-4444. State department of revenue to supervise inheritance tax.
91-4445. Powers and duties of the department.
91-4446. Powers and duties in nonresident estates.
91-4447. Duty of the legal department of state.
91-4448. Forms and blanks.
91-4449. Duties of clerks of district courts.
91-4450. Monthly reports of county treasurer—payment of collections to state department of revenue—interest on unpaid amounts.
91-4451. Composition and compromise.
91-4454. Employment of assistants by department of revenue—compensation.
91-4455. Hearings by department of revenue—witnesses—false testimony as perjury—compensation.
91-4459. Checking by county clerk of records and transfers—report to department of revenue.
91-4460. County clerk to furnish department of revenue description of property conveyed within three years of death of grantor.
91-4461. Department of revenue to appraise property and certify value.
91-4462. Form provided to grantee—contents.
91-4463. Certificate of inheritance tax due.
91-4464. Payment by grantee of inheritance tax due—receipts for payment.

91-4401. (10400.1) Taxes on transfer—when and how imposed.

Tenants in Common

Where husband died after he and his wife had conveyed land owned as tenants in common to sons, reserving a life estate with right of survivorship, wife, who obtained deceased husband's one-half interest in land was subject to inheritance tax on husband's interest under section 91-4405, but sons' interests were not taxable until termination of the mother's life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4402. (10400.1) Transfers in contemplation of death.

Possession Postponed

Where husband and wife held real property as tenants in common, but transferred one half of the property to one son, and the other half to the other son, reserving a life estate in each piece of property with right of survivorship, on father's death sons were not subject to inheritance tax until termination of the mother's intervening life estate. In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4405. (10400.1) Joint estates, government bonds, tenants, etc.

Applicable Property

Since the 1951 amendment, this section, including the clause excepting from taxation property shown to have belonged to the survivor and not the decedent, applies whether the property is tangible or intangible or whether the purchase price or the actual property is the subject of the joint tenancy. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Corporate Stock

Corporate stock registered in both the husband's and wife's names, but pur-

chased by the wife, and in her possession, was not subject to inheritance tax on death of husband. In re Parks' Estate, 145 M 333, 401 P 2d 83.

Nontaxable Transfers

The 1951 amendment, stipulating that upon the death of one of the spouses, "the right of the survivor or survivors to the immediate possesion or ownership is a taxable transfer," when read in conjunction with the clause excepting property shown to have belonged originally to the survivor, shows that a "transfer" is taxed, but what in reality is not a "transfer" is not taxed. In re Parks' Estate, 145 M 333, 401 P 2d 83.

References

In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4407. (10400.1) **Tax on clear market value—deductions.**

Clear Market Value

Clear market value as used in this section means net value in the open market as determined by price willing but not obligated buyer would pay and willing but not obligated seller would accept, with both parties knowing all pertinent facts affecting value. In re Estate of Power, 156 M 100, 476 P 2d 506.

Valuation of United States Treasury bonds redeemable at par in discharge of federal estate tax liability must be based on clear market value on date of decedent's death for purposes of this section rather than on par value. In re Estate of Power, 156 M 100, 476 P 2d 506.

References

Cited in Salvation Army v. State, 144 M 415, 396 P 2d 463, 466.

91-4411. (10400.3a) **Estate tax.** (a) In addition to the inheritance taxes hereinabove imposed, an estate tax is hereby imposed upon the transfer of the estate of every decedent leaving an estate which is subject to the federal estate tax imposed by the United States of America under the applicable provisions of the Internal Revenue Code and which has, in whole or in part, a taxable situs in this state. The tax hereby imposed upon the transfer of each such estate shall be equal to the maximum tax credit allowable for state death taxes against the federal estate tax imposed with respect to the portion of the decedent's estate having a taxable situs in this state, less the inheritance taxes, if any, due this state, it being the purpose and intent of this section to impose only such additional taxes hereunder as may be necessary to give this state the full benefit of the maximum tax credit allowable against the federal estate tax imposed with respect to a decedent's estate which has a taxable situs in this state. If only a portion of a decedent's estate has a taxable situs in this state, such maximum tax credit shall be determined by multiplying the entire amount of the credit allowable against the federal estate tax for state death taxes by the percentage which the value of the portion of the decedent's estate which has a taxable situs in this state bears to the value of the entire estate. The tax imposed herein shall be collected by the several county treasurers or the state board of equalization for deposit with the state treasurer and distributed as hereafter provided. For the purpose of this tax, the taxable situs of property shall be the same as the taxable situs for inheritance tax purposes.

(b) and (c). * * * [Same as parent volume.]

(d) Lien. Said taxes and interest shall be, and remain, a lien on the property for a period of ten (10) years from the date of death, unless sooner paid.

(e). * * * [Same as parent volume.]

(f) Duplicate returns. It shall be the duty of the legal representative of the estate of any decedent, whose estate may be subject to the payment of a United States estate tax, to file duplicates of the United States estate tax returns with the district court of the county in which such estate is being probated. He shall also file with such court a certificate or other evidence from the bureau of internal revenue showing the amount of the United States estate tax as computed by that department. The district court shall hear all parties desiring to be heard with respect to the amount of state estate tax and shall enter an order determining such tax and the amount thereof so due and payable. Any person in interest aggrieved by such determination shall have the same right of rehearing and appeal as is now provided for in the determination of inheritance taxes.

(g) Intent of subdivisions (a) to (h). It is hereby declared to be the intent and purpose of subdivisions (a) to (h) to obtain for this state the benefit of the credit allowed under the provisions of said Internal Revenue Code, to the extent that this state may be entitled by the provisions of said act, by imposing additional taxes and the same shall be liberally construed to effect this purpose.

(h). * * * [Same as parent volume.]

History: En. Sec. 2, Ch. 48, Ex. L. 1933; amd. Sec. 1, Ch. 360, L. 1969; amd. Sec. 1, Ch. 28, L. 1971.

Amendments

The 1969 amendment substituted "Internal Revenue Code of 1954" for "United States Revenue Act of 1926" in subsection (a); and "Internal Revenue Code" for "United States Revenue Act" in subsections (a) and (g).

The 1971 amendment rewrote subsection (a), for previous text of which see parent volume; inserted the ten-year limitation in subsection (d); deleted "who was a resident of this state at the time of his death" after "decedent" in the first sentence of subsection (f); and made minor changes in phraseology.

Effective Dates

Section 2 of Ch. 360, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved March 14, 1969.

Section 2 of Ch. 28, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 16, 1971.

DECISIONS UNDER FORMER LAW

Reference to Federal Act

Fact that 1926 Revenue Act, formerly referred to in this section, has been repealed and 1939 Act has been passed in its place in no way affects validity or effectiveness of this section. In re Estate of McLaughlin, 154 M 318, 462 P 2d 882.

91-4414. (10400.4) **Exemptions from first $25,000.** The following exemptions from the tax are hereby allowed, the exemption allowed to each person, institution, association, corporation and body politic to be taken out of the first twenty-five thousand dollars passing by any such transfer to such person, institution, association, corporation or body politic:

(1). * * * [Same as parent volume.]

(2) $20,000; $5,000; $2,000 exempt, when. Property of the clear value of twenty thousand dollars ($20,000), transferred to the wife or to the husband of the decedent, five thousand dollars ($5,000) transferred to each minor lineal issue of the decedent, or any minor child adopted as

such in conformity with law, or any minor child to whom such decedent for not less than ten (10) years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth (15) birthday, and was continuous for ten (10) years, or any minor lineal issue of such adopted or mutually acknowledged child, and two thousand dollars ($2,000) transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in the first subdivision of section 91-4409 shall be exempt. Such exemption to the wife or husband of the decedent shall include all statutory dower, curtesy and other allowances. Any child of the decedent shall be entitled to credit for so much of the tax paid by the wife or husband as applied to any property which shall thereafter be transferred by or from such husband or wife to any such child, provided the husband or wife does not survive said decedent to exceed ten years.

(3) and (4). * * * [Same as parent volume.]

History: En. Sec. 4, Ch. 65, L. 1923; amd. Sec. 1, Ch. 105, L. 1953; amd. Sec. 1, Ch. 218, L. 1963; amd. Sec. 1, Ch. 244, L. 1965; amd. Sec. 1, Ch. 343, L. 1969; amd. Sec. 1, Ch. 317, L. 1973.

Amendments

The 1965 amendment increased exemptions specified in the first sentence of paragraph (2) from $17,500 to $20,000 for the wife of the decedent, and from $5,000 to $10,000 for the husband of the decedent.

The 1969 amendment increased exemptions specified in the first sentence of paragraph (2) from $10,000 to $20,000 for the husband of decedent; inserted $5,000 exemption for transfers to children; and included decedent's lineal issue who have attained majority under the $2,000 exemption.

The 1973 amendment inserted "minor" before "child" in two places and before "lineal issue" in one place, all in the first sentence of paragraph (2); inserted "who have attained majority" after "other persons" near the end of the first sentence of paragraph (2); substituted references to the husband or wife of the decedent for "widow" in four places in the second and third sentences of paragraph (2); inserted "curtesy" in the second sentence of paragraph (2); and made a minor change in phraseology.

91-4414.1. Discretionary waiver of inheritance tax of surviving spouse. Notwithstanding any provision of law or statute in conflict herewith, the state department of revenue, in its discretion, is authorized to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

History: En. Sec. 1, Ch. 147, L. 1969; amd. Sec. 76, Ch. 391, L. 1973.

Title of Act

An act allowing the state board of equalization, in its discretion, to issue a waiver of inheritance tax in the event of the death of any person leaving any real property or personal property, or both, in joint tenancy with a surviving spouse if the value of the property of the decedent is less than the inheritance exemption allowed by law to the surviving spouse.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-4415. (10400.5) **When payment due—lien of tax—liability for payment—place of payment—receipts—receipt or bond required before final accounting allowed.** All taxes imposed by this act shall be due and payable at the time of the death of the decedent, except as hereinafter pro-

vided; and every such tax shall be and remain a lien upon the property transferred for a period of ten (10) years from the time of the death of the decedent, whether said death occurred before or after the effective date of this act, unless sooner paid, and the person to whom the property is transferred and the administrators, executors, and trustees of every estate so transferred shall be personally liable for such tax until its payment.

The tax shall be paid to the state department of revenue for transmittal to the state treasurer or to the treasurer of the county in which the district court is situated having jurisdiction as herein provided, and if paid to the county treasurer said treasurer shall receipt therefor, making five copies thereof, and distribute said copies as follows: Original receipt, to the clerk of the district court; first copy, to the executor, administrator, trustee, or person paying said tax; second copy, attached to and mailed with the report required by section 91-4450, as amended, to the state department of revenue; third copy, to the county clerk and recorder; fourth copy, retained by the treasurer on file in his office. The copy of the receipt given to the executor, administrator, or trustee shall be a proper voucher in the settlement of his accounts.

No executor, administrator, or trustee shall be entitled to a final accounting of an estate, in settlement of which a tax is due under the provisions of this act, unless he shall produce such receipt or a certified copy thereof or unless a bond shall have been filed as prescribed by section 91-4419.

History: En. Sec. 5, Ch. 65, L. 1923; amd. Sec. 1, Ch. 16, L. 1951; amd. Sec. 1, Ch. 99, L. 1965; amd. Sec. 1, Ch. 34, L. 1971; amd. Sec. 77,Ch. 391, L. 1973.

Amendments

The 1965 amendment inserted "whether said death occurred before or after the effective date of this act" in the first paragraph.

The 1971 amendment rewrote the second paragraph to provide for payment to the state board of equalization, to provide for quintuplicate instead of triplicate receipts from the county treasurer, and to revise the distribution of copies of the receipts. For previous text, see parent volume.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places in the second paragraph.

Effective Date

Section 2 of Ch. 34, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

91-4416. (10400.6) **Discount—interest.** If such tax is paid within eighteen (18) months from the accruing thereof, a discount of five per cent (5%) shall be allowed and deducted therefrom. The deduction of this discount of five per cent (5%) shall be accomplished by paying within the eighteen (18) month period from the date that the tax accrues an amount equal to ninety-five per cent (95%) of the total tax declared due by the person making payment. If such tax is not paid within eighteen (18) months from the accruing thereof, interest shall be charged and collected thereon at the rate of ten per cent (10%) per annum from the time the tax accrued; unless by reason of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax shall not be determined and paid as herein provided, in which case interest at the rate of six per cent (6%) shall be charged upon such tax from the

accrual thereof until the cause of such delay is removed, after which ten per cent (10%) shall be charged, provided that litigation to defeat the payment of the tax shall not be considered necessary litigation. In all cases when a bond shall be given under the provisions of section 91-4419, interest shall be charged at the rate of six per cent (6%) after one (1) year from the date of death, until the date of payment thereof.

History: En. Sec. 6, Ch. 65, L. 1923; amd. Sec. 1, Ch. 15, L. 1967.

Amendments

The 1967 amendment inserted the figures in parentheses and added the present second sentence.

91-4417. (10400.7) **Powers of representative in collection and payment of tax—collection from legatees or distributees.** Every executor, administrator or trustee shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such administrator, executor, or trustee, having in charge or in trust any legacy or property for distribution, subject to such tax, shall deduct the tax therefrom; and within thirty days therefrom shall pay over the same to the county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereon upon the appraised value thereof, from the person entitled thereto. He shall not deliver or be compelled to deliver any specific legacy or property subject to tax under this law, to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the administrator, executor, or trustee, and the tax shall remain a lien or charge on such real property for the period provided in section 91-4415, and the payment thereof shall be enforced by the executor, administrator, or trustee in the same manner that payment of the legacy might be enforced, or by the attorney general under section 91-4440. If any such legacy shall be given in money to any such person for a limited period, the administrator, executor, or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him to make an apportionment if the case require it, of the sum to be paid into the hands of such legatees, and for such further order relative thereto as the case may require.

History: En. Sec. 7, Ch. 65, L. 1923; amd. Sec. 2, Ch. 99, L. 1965.

Amendment

The 1965 amendment substituted "for the period provided in section 91-4415" for "until paid" following "charge on such real property" in the fifth sentence.

91-4418. (10400.8) **Refunding of tax—when authorized—manner of refunding—advance payment of tax for relief from penalty and interest.** If any debt shall be proved against the estate of the decedent, after the payment of any legacy or distributive share thereof, from which any such tax has been deducted, or upon which it has been paid by the person entitled to such legacy or distributive share and such person is required

by the order of the district court having jurisdiction of the tax so deducted or paid, to refund the amount of such debts or any part thereof, an equitable proportion thereof shall be repaid to such person by the executor, administrator or trustee, if the said tax has not been paid to the county treasurer or state treasurer, or by them, in the proper proportionate shares, if it has been so paid.

Any person from whom such tax is or may be due may make an estimate of and pay the same to the clerk of court, who shall receipt therefor, at any time before the same is determined by the court, and shall thereupon be relieved from any interest or penalty upon the amount so paid in the same manner as if the tax were then determined. In the event the person making payment has done so in accordance with the provisions of section 91-4416, pertaining to the allowance of a five per cent (5%) discount, the person making payment shall be relieved from any interest or penalty and shall be allowed the five per cent (5%) discount upon the amount which he so declared due as his inheritance tax liability. The tax may be declared to be due by the filing with the clerk of court of a statement of such declaration or by paying the amount estimated by the taxpayer to be due. The money shall be paid to the clerk of the district court who must deposit same with the state department of revenue. The clerk of the district court shall pay the collections to the state department of revenue on or before the fifth day of the month following the collection.

As soon as the correct amount of inheritance tax has been determined, any excess so paid shall be refunded to the person so paying or entitled thereto by the state department of revenue based upon the filing of a properly documented claim by the clerk of court.

History: En. Sec. 8, Ch. 65, L. 1923; amd. Sec. 1, Ch. 47, L. 1935; amd. Sec. 7, Ch. 126, L. 1963; amd. Sec. 2, Ch. 15, L. 1967; amd. Sec. 1, Ch. 36, L. 1971; amd. Sec. 1, Ch. 316, L. 1973; amd. Sec. 78, Ch. 391, L. 1973.

Compiler's Notes

This section was amended twice in 1973, once by Ch. 316 and once by Ch. 391. Neither amendatory act mentioned the other. Since Ch. 316 included the changes made by Ch. 391, the compiler has used the text of Ch. 316 above.

Amendments

The 1967 amendment inserted the second and third sentences in the second paragraph.

The 1971 amendment deleted "for credit to the clerk of the district court's deposit or trust fund until the correct amount of the tax has been determined" from the end of the fourth sentence of the second paragraph; inserted in the second paragraph a fifth sentence reading "The county treasurer shall include such collections in the next payment he makes to the state board of equalization pursuant to section 91-4450"; substituted "by the state board of equalization based upon the filing of a properly documented claim by the clerk of court" at the end of the section for "by such clerk of court out of said trust fund"; and deleted "and the county treasurer shall receipt for the amount of the inheritance tax so determined by the court" from the end of the section.

Chapter 316, Laws of 1973, substituted "the state department of revenue" at the end of the fourth sentence of the second paragraph for "the county treasurer"; substituted the present fifth sentence of the second paragraph for the fifth sentence inserted by the 1971 amendment; made a separate paragraph of the final sentence of the second paragraph; and substituted "department of revenue" for "board of equalization" in the third paragraph.

Chapter 391, Laws of 1973, substituted "department of revenue" for "board of equalization" in the fifth sentence of the second paragraph as inserted by the 1971 amendment and deleted by Ch. 316, and in the present third paragraph.

Effective Date

Section 3 of Ch. 15, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved February 3, 1967.

91-4419. (10400.9) **Bond for deferred payment of tax.** Any beneficiary of any property chargeable with a tax under this act, and any executors, administrators and trustees thereof, may elect, within eighteen months from the date of the death of decedent or transfer thereof as herein provided, not to pay such tax until the person or persons beneficially interested therein shall come into the actual possession or enjoyment thereof. The person or persons so electing shall give a bond to the state in a penalty of three times the amount of any such tax, with such sureties as the district court of the proper county or the state department of revenue, as the case may be, may approve, conditioned for the payment of such tax and interest thereon, at such time or period as the person or persons beneficially interested therein may come into the actual possession or enjoyment of such property, which bond shall be filed in the district court, or in the office of the state treasurer as the case may be. Such bond must be executed and filed and a full return of such property upon oath made to the district court within eighteen months from the date of the death of decedent or transfer as herein provided, and such bond must be renewed every five years, and said deferred tax shall bear interest at six per cent per annum after such eighteen months.

History: En. Sec. 9, Ch. 65, L. 1923; amd. Sec. 79, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the second sentence.

91-4421. (10400.11) **Payment of tax on transfer of securities by foreign representative—duty of holder of securities or assets of nonresident decedent—apportionment of deductions—information to be given department of revenue—amount of tax to be retained on delivery of assets—penalties.** (1) * * * [Same as parent volume.]

(2) No safe deposit company, bank, or other institution, person or persons, holding securities or assets of a nonresident decedent, nor any corporation organized under the laws of this state, in which a nonresident decedent held stock, bonds, mortgages, or other securities, at his decease, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or upon their order or request, unless notice of the time and place of such intended transfer be served upon the state department of revenue at least ten (10) days prior to the said transfer; nor shall any such safe deposit company, bank, or other institution, person or persons, nor any corporation, deliver or transfer any securities or assets of the estate of a nonresident decedent without retaining a sufficient portion or amount thereof to pay any tax which may thereafter be assessed on account of the transfer of such securities or assets under the provisions of the inheritance tax laws, without an order from the proper court authorizing such transfer; and it shall be lawful for the state department of revenue, personally or by representative, to examine said securities or assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain a sufficient portion or amount to pay such tax as herein provided, shall render said safe deposit company, trust company, bank, or other institu-

tion, person or persons, or such corporation, liable to the payment of the tax due upon said securities or assets in pursuance of the provisions of the inheritance tax laws. The state department of revenue may issue a certificate authorizing the transfer of any such stock, securities or assets whenever it appears to the satisfaction of the said board that no tax is due thereon; provided, however, that the foregoing provisions shall not apply to shares of stock in any Montana corporation held by a nonresident of Montana at the time of his death whose death occurred on or after January 30, 1945, and who was at the time of his death domiciled in any other district or state of the United States, provided reciprocal rights are granted by such district or state of domicile similar to section 91-4413, and in such event this subsection (2) shall not apply to the transfer of stocks, bonds, mortgages or other securities exempt from taxation under the provisions of section 91-4413, and a Montana corporation, or its agent, may transfer stocks, bonds, mortgages and other securities without any liability for the tax imposed under the provisions of the inheritance tax laws where there are reciprocal rights as set forth in section 91-4413, and in such event no application for consent to transfer such stock need be made to the state department of revenue of the state of Montana, and the corporation, or its duly authorized transfer agent may transfer such shares of stock upon its books without any such application or consent to transfer.

(3) * * * [Same as parent volume.]

(4) The state department of revenue shall require such reports and information and shall make such orders, rules, and regulations as it may deem necessary to enable the department to secure the necessary information from domestic corporations, and to ascertain the amount of and collect such tax; and no holding company or other corporation subject to the provisions of this section shall deliver or transfer any such stocks, bonds, mortgages, or other securities of a Montana corporation without retaining a sufficient portion thereof to pay any tax which may thereafter be assessed under the provisions of this act on account of such transfer, except upon order of the proper court or a certificate of consent of the state department of revenue.

(5) * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 65, L. 1923; amd. Sec. 2, Ch. 150, L. 1925; amd. Sec. 2, Ch. 105, L. 1927; amd. Sec. 1, Ch. 130, L. 1929; amd. Sec. 1, Ch. 62, L, 1953; amd. Sec. 80, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout subsections (2) and (4).

91-4423. (10400.13) **Jurisdiction of district court—notice to department of revenue required before hearing.** The district court of every county of the state having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under the inheritance tax laws, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of the inheritance tax laws, and to do any act in relation

thereto authorized by law to be done by a district court in other matters or proceedings coming within its jurisdiction; and if two or more district courts shall be entitled to exercise any such jurisdiction, the district court first acquiring jurisdiction hereunder, shall retain the same to the exclusion of every other district court.

Before any decree determining inheritance tax in any estate shall be made by the court, the court shall require proof that due notice has been given to the state department of revenue before the hearing upon the petition to have inheritance tax determined, whether such hearing be at the time of the hearing on the final account or otherwise; and the court shall likewise require proof that a copy of such petition has been given to the department not later than the time of giving the notice; and, before the time fixed in said notice, said department shall cause to be filed, with the clerk of the district court, a certificate signed by the department stating that the amount of the inheritance tax determined to be due the state of Montana as appearing in the report or petition, has been properly computed therein or, if no tax is due, such certificate shall so state; and, if the department shall object to the amount of the tax so computed, the department shall, before the time fixed for the hearing, file with the clerk of the court its written objections thereto, setting forth therein the nature of the objections. If neither such certificate nor objections shall have been filed at the time fixed for the hearing, it shall be conclusively presumed that the department concurs in the amount so computed.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 1, Ch. 79, L. 1951; amd. Sec. 81, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the second paragraph.

91-4425. (10400.15) Determination of tax due from estate of nonresident decedent—application—appeals. (1) Any personal representative, trustee, heir, devisee or legatee of a nonresident decedent leaving no estate requiring administration in this state, desiring to transfer any stocks, bonds, mortgages or other securities, or other personal property in this state or within the jurisdiction of this state, may make application to the state department of revenue for the determination whether there is any tax due upon account of the transfer thereof, and the amount of any such tax, and such applicant shall furnish to the state department of revenue therewith, an affidavit setting forth a description and statement of the property owned by the decedent situated within this state, or within its jurisdiction at the time of his death, the true value of said property at the time of decedent's death; a description and statement of the true value of all property owned by the decedent at the time of his death situated outside of this state, and without its jurisdiction; and containing a schedule or statement of all valid claims against the estate of the decedent, including the expenses of his last illness, funeral expenses and expenses of administering his estate. Such applicant shall also, at the same time, furnish the state department of revenue with a certified copy of the last will of the decedent, in case he died testate, or an affi-

davit setting forth the names, ages, and residence of the heirs at law of decedent in case he died intestate, and the proportion of the entire estate of said decedent inherited by each of said persons, and the relation, if any, which each legatee, devisee, heir, or transferee sustained to the decedent, or person from whom the transfer was made. Such affidavit shall be subscribed and sworn to by the personal representative of the decedent, or some other person having knowledge of the facts therein set forth.

(2) The statement contained in any affidavits, statements or schedules as to values, or otherwise, shall not be binding upon the state department of revenue in case they believe the same to be erroneous or untrue. From the information so furnished them and such other information as they may be able to obtain with reference thereto, the state department of revenue shall, with reasonable diligence, proceed to ascertain and determine the amount of tax, if any, due under the provisions of this act, and notify the person making the application of the amount of the tax so ascertained and determined to be due; or in case there is no tax to be paid, the state department of revenue shall issue a consent to the transfer of the property so owned by the decedent.

(3) Any person aggrieved by the determination of the state department of revenue in any matter herein provided for in this section may, within thirty (30) days thereafter, appeal to the district court of Lewis and Clark county, by serving on the state department of revenue a notice in writing setting forth his objections to such determination, and by filing such notice, after so serving the same, in the office of the clerk of such court, and thereupon, and within ten (10) days after the service of such notice on them the state department of revenue shall transmit full and complete copies of all original papers and records which have been filed with them in relation to such application, to the clerk of said district court, and thereupon the said district court shall have jurisdiction of such application and proceeding. Upon ten days' notice given by either applicant or the state department of revenue, the matter may be brought on for hearing and determination by said court, either in term time or in vacation, at a general or special term of court, or at chambers, as may be directed by the order of the court.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 82, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

91-4426. (10400.16) **Determination when application not made.** Whenever any nonresident decedent, leaving no estate requiring administration in this state, shall leave any stocks, bonds, mortgages, or other securities, or other personal property within the state or within the jurisdiction thereof, and no personal representative, trustee, heir, devisee, or legatee of such nonresident decedent has made application to the state department of revenue for the determination as to whether there is any tax due for the transfer thereof and the amount of such tax, if any, the state department of revenue, upon such matter being called to its attention, shall make an order, and cause a copy thereof to be served upon the personal

representative, trustee, heirs, devisees or legatees of such nonresident decedent, ordering and directing that a statement and return, under oath, containing the statements and information prescribed in section 91-4425, be filed with such board within sixty (60) days from the date of such order, or within such further time as the state department of revenue may grant therefor; and if such statement is not filed with the state department of revenue within such time the state department of revenue may then procure such information in any manner it may deem advisable. Upon the filing of such statement, or the procuring of such information by the state department of revenue in the event of a failure to file the same in compliance with such order, the state department of revenue shall proceed in the same manner as prescribed by section 91-4425, and all provisions thereof with reference to hearings and appeals shall be applicable thereto.

History: En. Sec. 12, Ch. 65, L. 1923; amd. Sec. 3, Ch. 150, L. 1925; amd. Sec. 83, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

91-4427. (10400.17) **Special appraiser.** The district court, upon the application of any interested party, including the state department of revenue, shall appoint a competent person as special appraiser to fix the fair market value at the time of the transfer thereof of the property of persons whose estate shall be subject to the payment of any tax imposed by this act.

History: En. Sec. 13, Ch. 65, L. 1923; amd. Sec. 2, Ch. 141, L. 1927; amd. Sec. 84, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization."

91-4428. (10400.18) **Duties, powers and compensation of appraisers.** Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the state department of revenue, and to such persons as the district court may by order direct, of the time and place when he will appraise such property. He shall, at such time and place, appraise the same at its fair market value, as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said district court, together with the depositions of the witnesses examined, and such other facts in relation thereto and to the said matter as the said district court may order or require. Every appraiser shall be paid on the certificate of the district court at the rate of not to exceed ten dollars ($10.00) per day for every day actually and necessarily employed in such appraisal, and shall receive his actual and necessary traveling expenses, and witnesses shall be allowed the same fees as are allowed witnesses in civil actions in courts of record and the same shall be paid by the executor,

administrator or trustee of such estate in the same manner as provided for the payment of other administration expenses.

History: En. Sec. 14, Ch. 65, L. 1923; amd. Sec. 4, Ch. 150, L. 1925; amd. Sec. 85, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the first sentence.

91-4429. (10400.19) **Hearing by the court.** The report of the special appraiser shall be made in triplicate, and not less than ten (10) days before the hearing thereon one of said triplicates shall be filed in the office of the district court, one to the administrator or the executor, and the other shall be mailed to the state department of revenue. At the time and place of hearing the administration account, the district court shall examine such report, and from the report and other proofs relating to any such estate shall forthwith determine the cash value of such estate and the amount of tax to which the same is liable; or, the district court without appointing such appraiser may at the time so fixed hear the evidence and determine the cash value of such estate and the amount of tax to which the same is liable.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 86, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the first sentence.

91-4430. (10400.20) **Notice of hearing.** Notice of such hearing to determine the inheritance tax shall be given in the same manner and may be included in the notice of hearing the administration account, as provided by law. A copy of the application for exclusion of any property to avoid inheritance tax thereon shall be given with notice of hearing thereof, and notice of any such hearing shall be mailed to the state department of revenue not less than fifteen (15) days before such hearing, upon notice forms provided by the department and containing such information as it may require.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 1, Ch. 80, L. 1949; amd. Sec. 87, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "the department" for "board of equalization" and "said board" in the second sentence.

91-4431. (10400.21) **Commissioner of insurance to value future estates, etc.** The commissioner of insurance shall, on application of any district court or of the state department of revenue, determine the value of any such future or contingent estates, income, or interests therein limited, contingent, dependent, or determinable upon the life or lives of the person or persons in being, upon the facts contained in the district court's finding and determination and contained in such special appraiser's report, and upon the facts certify the same to the district court or to the state department of revenue, and his certificate shall be presumptive evidence that the method of computation adopted therein is correct.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 88, Ch. 391, L. 1973.

Amendments
The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4432. (10400.22) **Appraisal at clear market value at time of death, etc.**

References
In re Hess' Estate, 145 M 552, 403 P 2d 748.

91-4437. (10400.27) **Order determining tax—contents.** Upon the determination by the district court of the value of any estate which is taxable under the inheritance tax laws, and of the tax to which it is liable, an order shall be entered by the court determining the same, which order shall include a statement of (a) the date of death of the decedent, (b) the gross value of the real and personal property of such estate, stating the principal items thereof, (c) the deductions therefrom allowed by the court, (d) the names and relationship of the persons entitled to receive the same, with the amount received by each, (e) the rates and amounts of inheritance tax for which each such person is liable, and the total amount of tax to be paid, (f) a statement of the amount of interest or penalty due, if any. Such order shall be substantially in the form prescribed by the state department of revenue. A copy of the same shall be delivered or mailed to the county treasurer, the administrator or executor, and the state department of revenue, and no final judgment shall be entered in such estates until due proof is filed with the court that such copies have been so delivered or mailed, and receipts are filed with such court showing the payment of all such taxes, or proof is filed showing that the bond authorized by section 91-4419 has been given.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 1, Ch. 161, L. 1971; amd. Sec. 89, Ch. 391, L. 1973.

Amendments
The 1971 amendment deleted "the state treasurer" after "the county treasurer" in the third sentence.

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4438. (10400.28) **Rehearing within sixty days.** The attorney general, state department of revenue, public administrator, county attorney, or any person dissatisfied with the appraisement or assessment and determination of such tax may apply for a rehearing thereof before the district court within sixty (60) days from the fixing, assessing and determination of the tax by the district court as herein provided on filing a written notice which shall state the grounds of the application for a rehearing. The rehearing shall be upon the records, proceedings, and proofs had and taken on the hearing as herein provided unless additional or newly discovered evidence be alleged therefor, and a new trial shall not be had or granted unless specially ordered by the district court.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 90, Ch. 391, L. 1973.

Amendments
The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4439. (10400.29) **Reappraisement in the district court within one year.** Within one year after the entry of an order or decree of the district

court determining the value of an estate and assessing the tax thereon, the attorney general or the state department of revenue may, if he (or they) believes that such appraisal, assessment, or determination has been erroneously, fraudulently or collusively made, make application to the district judge for a reappraisal thereof. The district court to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers, be subject to the duties, shall give the notice and receive the compensation provided by sections 91-4428 to 91-4439, inclusive. Such compensation shall be payable by the county treasurer out of any funds he may have on account of any tax imposed under the provisions of this act, upon the certificate of the district judge. The report of such appraiser shall be filed in the office of the clerk of the district court, and thereafter the same proceedings shall be taken and had by and before such district court as herein provided to be taken and had by and before the said court. The determination and assessment of such district court shall supersede the former determination and assessment of such court, and shall be filed in the office of the county treasurer, state treasurer, and state department of revenue.

History: En. Sec. 15, Ch. 65, L. 1923; amd. Sec. 5, Ch. 150, L. 1925; amd. Sec. 3, Ch. 141, L. 1927; amd. Sec. 91, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4440. (10400.30) **Collection of unpaid taxes.** If any county treasurer, state treasurer, or the state department of revenue shall have reason to believe that any tax is due and unpaid under the provisions of this act, after the refusal or neglect of any person liable therefor to pay the same, he or they, shall notify the attorney general in writing of such failure or neglect, and the attorney general, if he have probable cause to believe that such tax is due and unpaid, shall apply to the district court for a citation citing the person liable to pay such tax to appear before the court on the day specified, not more than three months from the date of such citation, and show cause why the tax should not be paid. The judge of the district court upon such application and whenever it shall appear to him that any such tax accruing under this act has not been paid as required by law, shall issue such citation, and the service of such citation and the time, manner and proof thereof, and the hearing and determination thereof, shall conform as near as may be to the provisions of the laws governing probate practice of this state, and whenever it shall appear that any such tax is due and payable, and the payment thereof cannot be enforced under the provisions of this act, in said district court, the person or corporation from whom the same is due is hereby made liable to the state for the amount of such tax, and it shall be the duty of the attorney general, in the name of the state, to sue for and enforce the collection of such tax, and it is made the duty of the county attorney of the county to appear for and act on behalf of any county treasurer, who shall be cited to appear before any district court under the provisions of this act.

History: En. Sec. 16, Ch. 65, L. 1923; amd. Sec. 92, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4442. (10400.32) **Special administration to determine tax where transfer made in contemplation of death.** Where it appears that the estate of a deceased person subject to the inheritance tax laws was transferred in contemplation of the death of the grantor without the adjustment and payment of the inheritance taxes and no application for such adjustment is made within six months after the demise of such grantor, the public administrator of the proper county shall notify the state department of revenue and on its order make application for and shall be entitled to such general or special administration as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law and shall administer such estate the same as other estates are administered as though such estate had not been transferred by the grantor.

History: En. Sec. 17, Ch. 65, L. 1923; amd. Sec. 93, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue' for "board of equalization."

91-4443. (10400.43) **Public administrator's duty to investigate concerning tax—compensation.** It shall be the duty of the public administrator, under the general supervision of the state department of revenue, and with the assistance of the county attorney, when required by the department or district judge, to investigate the estates of deceased persons within his county and to appear for and act in behalf of the county and state in the district court in such estates as the court may in its discretion deem necessary, and for such services the public administrator shall be entitled to five per cent of the gross inheritance tax as determined in each such estate, to be paid by the county treasurer out of the inheritance tax funds upon an order of the district judge, provided that the minimum fee for each such estate shall not be less than five dollars, and that it shall not exceed twenty-five dollars; but in cases of unusual difficulty, in estates of resident decedents, where the tax exceeds five hundred dollars, the district judge may allow the public administrator such additional compensation as he may deem just and reasonable.

History: En. Sec. 17, Ch. 65, L. 1923; amd. Sec. 94, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4444. (10400.34) **State department of revenue to supervise inheritance tax.** It shall be the duty of the state department of revenue to supervise the administration of, and to investigate and cause to be investigated the administration of the inheritance tax laws, and such particular estates to which the inheritance tax laws apply throughout the various counties of the state, and to cause to be made and filed in its office reports of such investigation together with specific information and facts as to particular estates that may seem to require special consideration and attention by the

legal department of the state; but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 95, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4445. (10400.35) **Powers and duties of the department.** The state department of revenue in the conduct of inheritance tax affairs, shall have the same and similar powers and authority for gathering information and making investigations as is conferred by law on the department in the performance of its other duties. The department shall biennially report to the governor and to the legislature at the opening of the sessions the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with such recommendations for action thereon by the legislature as may be deemed advisable and proper.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 96, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-4446. (10400.36) **Powers and duties in nonresident estates.** The state department of revenue shall also gather information and make investigations and reports concerning the estates of nonresident decedents within the provisions of the inheritance tax laws, and shall especially investigate the probate and other records for such probable estates without the state and report thereon from time to time to the legal department of the state and to the proper district court for appropriate legal action, but no information so acquired shall, in advance of legal action, be disclosed to anyone except proper officials, and persons interested in such estate.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 97, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4447. (10400.37) **Duty of the legal department of state.** It shall be the duty of the legal department of the state to carry out and enforce the recommendations and directions of the state department of revenue in all matters pertaining to the conduct of inheritance tax affairs; and in every estate in which the amount of inheritance tax collectible shall exceed or probably exceed the sum of one thousand dollars, there shall be no compounding, composition, or settlement of the taxes under the authority conferred by section 91-4451 or otherwise, until the state department of revenue shall have investigated such estate and made a report thereon, nor until the department consents to such compounding, compromise, or settlement.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 98, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board" throughout the section.

91-4448. (10400.38) **Forms and blanks.** The state department of revenue shall prescribe such forms and prepare such blanks as may be necessary in inheritance tax proceedings in the district courts of the state; and such blanks shall be printed at the expense of the state and furnished to the district court upon the request of the judge or clerk thereof.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 99, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning of the section.

91-4449. (10400.39) **Duties of clerks of district courts.** It shall be the duty of the clerk of the district court to furnish to the state department of revenue copies of such documents filed in connection with probate matters as the department may require.

History: En. Sec. 18, Ch. 65, L. 1923; amd. Sec. 6, Ch. 150, L. 1925; amd. Sec. 100, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4450. (10400.40) **Monthly reports of county treasurer—payment of collections to state department of revenue—interest on unpaid amounts.** On or before the fifth day of each month each county treasurer shall make a report under oath to the state department of revenue listing all payments received by him under the inheritance tax laws, during the preceding month, and stating for what estate, by whom and when paid. The form of such report shall be prescribed by the state department of revenue. He shall at the same time pay the state department of revenue all the payments received by him under the inheritance tax laws and not previously paid to the state department of revenue, and for all such payments collected by him and not paid to the state department of revenue within five days from the time herein required, he shall pay interest at the rate of ten per cent (10%) per annum.

History: En. Sec. 19, Ch. 65, L. 1923; amd. Sec. 7, Ch. 150, L. 1925; amd. Sec. 2, Ch. 36, L. 1971; amd. Sec. 101, Ch. 391, L. 1973.

Amendments

The 1971 amendment substantially rewrote this section. For former text, see parent volume.

The 1973 amendment substituted "department of revenue" for "board of equalization" throughout the section.

Effective Dates.

Section 3 of Ch. 36, Laws 1971 read "The change in reporting and remittance of payments received as provided in section 2 is effective for such payments received, or on hand, on or after April 1, 1971. The first report and remittance based on the change is due by May 5, 1971."

Section 4 of Ch. 36, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved February 18, 1971.

91-4451. (10400.41) **Composition and compromise.** The state department of revenue is authorized to enter into an agreement with the exec-

utor, administrator, or trustee of any estate in which remainders or expectant estates have been of such a nature or so disposed and circumstanced that the taxes therein were held not presently payable or where the interests of the legatees or devisees are not ascertainable under the provisions of this act, or whenever a tax is claimed on account of the transfer of any property of a nonresident decedent, and to compound such taxes upon such terms as may be deemed equitable and expedient and to grant discharges to said executors, administrators, or trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of such executors, administrators, or trustees as against the interests of such cestui que trust as may possess either present rights of enjoyment or fixed, absolute, on indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto either personally when competent or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate and one copy shall be filed in the office of the clerk of the district court of the county in which the tax was paid; one copy to be delivered to the executors, administrators, or trustees, who shall be parties thereto, and one copy to be retained by the department of revenue.

History: En. Sec. 20, Ch. 65, L. 1923; amd. Sec. 102, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" near the beginning and at the end of the section.

91-4454. (10400.45) **Employment of assistants by department of revenue—compensation.** The state department of revenue may employ such other persons as experts and assistants as may be necessary to perform the duties that may be required of the department and fix their compensation.

History: En. Sec. 24, Ch. 65, L. 1923; amd. Sec. 103, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" and "department" for "board of equalization" and "board."

91-4455. (10400.46) **Hearings by department of revenue—witnesses—false testimony as perjury—compensation.** Oaths to witnesses in any matter under the investigation or consideration of the state department of revenue may be administered by the director of revenue or his appointed agents. In case any witness shall fail to obey any summons to appear before the department or shall refuse to testify or answer any material questions or to produce records, books, papers, or documents, when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the department or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material manner under the consideration of the department shall be guilty of and punished for perjury. In the discretion of the

department, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officers and witnesses in the district court.

History: En. Sec. 25, Ch. 65, L. 1923; amd. Sec. 104, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" and "director of revenue or his appointed agents" for "secretary of the board or by any member thereof" in the first sentence; and substituted "department" for "board" throughout the remainder of the section.

91-4459. (10400.51) **Checking by county clerk of records and transfers—report to department of revenue.** The county clerk, upon the receipt of the list of deaths provided for in section 91-4458, shall immediately check the records of his county to determine whether any of the deceased persons whose names appear upon such list may have made any transfer of property or of property rights within such county during the three years preceding the death of such person or whether such deceased person may have been possessed of any property in such county at the time of his death.

If he shall find that any such deceased person may have made any such transfers of property or of property rights, or have died possessed of such, he shall immediately transmit such information to the state department of revenue.

History: En. Sec. 3, Ch. 186, L. 1935; amd. Sec. 105, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" at the end of the section.

91-4460. County clerk to furnish department of revenue description of property conveyed within three years of death of grantor. Wherever any deed conveying real property from husband to wife, or wife to husband, is filed with the county clerk and recorder within three (3) years prior to the date of the death of the grantor, or, at or after the date of death of the grantor, it shall be the duty of the county clerk and recorder to furnish the department of revenue with a description of the property so conveyed and the names of the grantor and the grantee.

History: En. Sec. 1, Ch. 248, L. 1961; amd. Sec. 106, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "county assessor."

91-4461. Department of revenue to appraise property and certify value. It shall be the duty of the department of revenue or its agent to appraise said property and to certify the appraised value of the property so conveyed on a form to be provided by the state department of revenue for this purpose.

History: En. Sec. 2, Ch. 248, L. 1961; amd. Sec. 107, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue or its agent" near the beginning of the section for "county assessor" in order to implement article VIII, section 3 of the 1972 constitution; and substituted "department of revenue" for "board of equalization" near the end of the section.

91-4462. Form provided to grantee—contents. The county clerk and recorder, at the time of the filing of said deed, if the deed is filed at or after death, or when informed by the grantee or someone acting on behalf of the grantee of the death of a grantor within the three (3) year period above mentioned, shall furnish the grantee, or one acting on behalf of the grantee, a form to be prepared by the state department of revenue, which form shall show the degree of relationship between the grantor and the grantee and such other essential information as the state department of revenue may need in order to determine what, if any, inheritance tax may be due to the state of Montana by reason of the transfer of the property so conveyed. Said form shall also contain an affidavit of the grantee setting forth that the grantor died without having any other property necessitating the procuring of letters of administration, or letters testamentary, or special letters for the purpose of terminating joint tenancy and that to the knowledge of the grantee the property was not by will otherwise bequeathed. It shall also contain the name and address of any other heirs of the grantor.

History: En. Sec. 3, Ch. 248, L. 1961; amd. Sec. 108, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in two places.

91-4463. Certificate of inheritance tax due. Upon receipt of the report of the agent of the department of revenue, and the form and affidavit of the grantee, the state department of revenue shall issue to the grantee a certificate stating the amount of inheritance tax determined to be due to the state of Montana by reason of said transfer, or if no tax is due, such certificate shall so state.

History: En. Sec. 4, Ch. 248, L. 1961; amd. Sec. 109, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "agent of the department of revenue" for "county assessor" in order to implement article VIII, section 3 of the 1972 constitution; and substituted "department of revenue" for "board of equalization."

91-4464. Payment by grantee of inheritance tax due—receipts for payment. If a tax is determined due by reason of said transfer the grantee shall pay the tax to the county treasurer, who shall make triplicate receipts of such payment, one of which he shall immediately send to the state treasurer, whose duty it shall be to charge the county treasurer so receiving the tax with the amount thereof. One receipt the county treasurer shall keep on file in his office. The other receipt shall be delivered to the grantee, or one acting in his behalf, which, when filed with the county clerk and recorder together with the certificate of the state department of revenue, shall be prima facie proof of the payment of any inheritance tax due by reason of said transfer. If the certificate shall determine no tax due by reason of said transfer, the filing of said certificate with the county clerk and recorder shall operate to the same effect. Payment of inheritance tax under this act shall be governed by the provisions of section 91-4416.

History: En. Sec. 5, Ch. 248, L. 1961; amd. Sec. 110, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in the third sentence.

91-4466. Repealed.

Repeal

Section 91-4466 (Sec. 7, Ch. 248, L. 1961), relating to appraisal by state board of equalization when the county assessor's appraisal is questioned, was repealed by Sec. 113, Ch. 391, Laws 1973.

CHAPTER 45—GUARDIAN AND WARD

91-4515. (5878) Rules of awarding custody of minors.

Death of Both Parents

In a custody dispute between maternal grandparents and father of children whose mother died prior to action, where father to whom children were awarded also died pending hearing on motion for new trial, maternal grandparents who had filed motion for new trial and who had already been determined by court to be fit and proper persons for custody of children would have been entitled to custody without new trial but for second wife of deceased husband who was entitled to hearing on petition to intervene as party to whom deceased father wished children to go. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

Welfare of Child Paramount

District court did not abuse its discretion in awarding custody of two younger children to father, who had moved to California, since children had a good home with their father and paternal grandparents, were well cared for and happy, were given more than adequate educational and religious training and had lived with their father for more than five years. Anderson v. Anderson, 145 M 244, 400 P 2d 632.

Although 12-year-old daughter expressed desire to live with her mother, custody was properly awarded to father where evidence showed emotional instability on part of mother which she evinced by communicating her morbid suspicion of improper conduct by father. Libra v. Libra, 157 M 252, 484 P 2d 748.

Evidence that mother had, since time of divorce, remarried, overcome previous emotional difficulties, and quit her job in order to provide for time and attention needed to raise child, supported modification of divorce decree, in best interests of child, so as to grant custody to mother. McCullough v. McCullough, — M —, 498 P 2d 1189.

References

Hurly v. Hurly, 147 M 118, 411 P 2d 359.

CHAPTER 48—GUARDIANSHIP OF INCOMPETENT VETERANS, MINORS, AND OTHER BENEFICIARIES OF THE VETERANS ADMINISTRATION

Section 91-4812. Compensation of guardians.

91-4801. Definitions.

Compiler's Notes

In addition to those enumerated in the parent volume, the following jurisdictions have adopted the Uniform Veterans' Guardianship Act: Alabama, Iowa, Kansas, Michigan, Mississippi, Nevada, New York, Puerto Rico, West Virginia and Wyoming.

91-4812. Compensation of guardians. Compensation payable to guardians shall be based upon services rendered and shall not exceed five per cent (5%) of the amount of moneys received during the period covered by the account, or a minimum of one hundred dollars ($100) whichever is the greater, the decision as to such amount of compensation, however, to be at the discretion of the district court. In the event

of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans' administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments.

History: En. Sec. 12, Ch. 58, L. 1943; amd. Sec. 1, Ch. 25, L. 1969.

Amendments

The 1969 amendment added "or a minimum of one hundred dollars * * * district court" to the first sentence.

CHAPTER 49—GUARDIAN'S POWERS AND DUTIES

91-4906. (10422) **Guardian to return inventory of estate of ward, etc.**

Failure To File Inventory

Court on own motion could require guardian to appear and account for funds in his possession, where he neglected to file inventory and appraisement within three-month period as required by statute, notwithstanding that parties to action were still before court. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

CHAPTER 50—SALE OF PROPERTY BY GUARDIANS—INVESTMENT OF PROCEEDS

Section 91-5015. Conditions of sales of real estate of wards—bond and mortgage to be given for deferred payments.

91-5015. (10442) **Conditions of sales of real estate of wards—bond and mortgage to be given for deferred payments.** All sales of real estate of wards, where the sales price is five thousand dollars ($5,000) or less, must be for cash, or for part cash and part deferred payments, the credit in no case to exceed three years from the date of sale, as in the discretion of the court or judge is most beneficial to the ward. For sales of real estate of wards where the sales price exceeds five thousand dollars ($5,000), deferred payments may be extended not to exceed twenty (20) years. Guardians making sales must demand and receive from the purchasers, in case of deferred payments, notes and mortgage or trust indenture or contract for deed; on the real estate sold, with such additional security as the court or judge deems necessary and sufficient to secure the prompt payment of the amounts so deferred, and the interest thereon.

History: En. Sec. 390, p. 340, L. 1877; re-en. Sec. 390, 2nd Div. Rev. Stat. 1879; re-en. Sec. 390, 2nd Div. Comp. Stat. 1887; re-en. Sec. 3014, C. Civ. Proc. 1895; re-en. Sec. 7794, Rev. C. 1907; re-en. Sec. 10442, R. C. M. 1921; amd. Sec. 1, Ch. 27, L. 1969. Cal. C. Civ. Proc. Sec. 1791.

Amendments

The 1969 amendment inserted "where the sales price is five thousand dollars ($5,000) or less" after "real estate of wards" in the first sentence; inserted the second sentence; and, in the third sentence, deleted "a" before "mortgage" and inserted "or trust indenture or contract for deed" after "mortgage."

Effective Date

Section 2 of Ch. 27, Laws 1969 provided the act should be in effect from and after its passage and approval. Approved February 13, 1969.

CHAPTER 52—GUARDIANSHIP—GENERAL AND MISCELLANEOUS PROVISIONS

91-5201. (10455) Examination of persons suspected of defrauding wards, etc.

Examination of Administrator

In a proceeding for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness as provided in Rule 43, and Rule 81, excluding statutory proceedings from Rules of Civil Procedure to extent that statutory proceedings are contrary to Rules, does not bar examination of administrator as adverse witness. In re Estate & Guardianship of Wyman, 149 M 525, 429 P 2d 629.

CHAPTER 53—PROCEEDINGS IN LIEU OF PROBATE—ESTATES OF LESS THAN TEN THOUSAND DOLLARS

Section 91-5301. Estate may be set aside to surviving spouse or child—net value of estate must be less than ten thousand dollars.
91-5302. Value of joint property and property transferred during lifetime giving rise to tax liability—included in determination of net value of estate.
91-5303. Termination of life estate or joint tenancy—combined with proceeding to set aside property.
91-5304. Petition to set aside estate—requirements.
91-5305. Notice—contents.
91-5306. Notice—time and manner of giving.
91-5307. Special appraiser—duties, powers and compensation.
91-5308. Court decree—conditions—assignment to surviving spouse or child—title vested—subject to encumbrances—exemptions limiting assignment.
91-5309. Jurisdiction of court cannot be collaterally attacked when decree final in the absence of fraud.
91-5310. When estate shall be administered in the usual manner.
91-5311. Pending actions excepted.
91-5312. Existing statutes not repealed.

91-5301. Estate may be set aside to surviving spouse or child—net value of estate must be less than ten thousand dollars. If a decedent leaves a surviving spouse or child or children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any homestead interest set apart out of decedent's estate under chapter 25, Title 91, R. C. M. 1947, does not exceed the sum of ten thousand dollars ($10,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the child or children of the decedent.

History: En. Sec. 1, Ch. 51, L. 1969; amd. Sec. 1, Ch. 223, L. 1973.

Title of Act

An act to provide for summary proceedings in lieu of probate for specified estates of less than ten thousand dollars.

Amendment

The 1973 amendment deleted "resident" before "decedent" near the beginning of the section; and deleted "minor" before "child" and "children."

91-5302. Value of joint property and property transferred during lifetime giving rise to tax liability—included in determination of net value of estate. The value of decedent's interest in any joint property at the time of his death, which might give rise to tax liability under section 91-4405, R. C. M. 1947, and the value of any property transferred by the

decedent during his lifetime which might give rise to tax liability under section 91-4402, R. C. M. 1947, shall be included to determine if the net value of the whole estate of the decedent does exceed the sum of ten thousand dollars ($10,000) as provided in the preceding section.

History: En. Sec. 2, Ch. 51, L. 1969.

91-5303. Termination of life estate or joint tenancy—combined with proceeding to set aside property. An action or proceedings to terminate a life estate or joint tenancy may be combined with an action or proceedings to set aside property under this act, where otherwise proper under the provisions of this act, and of section 91-4321, R. C. M. 1947.

History: En. Sec. 3, Ch. 51, L. 1969.

91-5304. Petition to set aside estate—requirements. Allegations showing that this act is applicable together with a prayer that the estate be set aside as provided in this act may be included alternately in the petition for probate of the will, or for letters of administration; or such allegations and prayer may be presented by separate petition filed by the personal representative of the decedent, or the surviving spouse, or the child or children, filed at any time before the hearing on the petition for the probate of the will or for letters of administration or after the filing of the inventory. In all cases the petition must be verified; and the allegation shall include a specific description and an estimate of the value of all of the decedent's property, a list of all liens and encumbrances at the date of death, and a designation of any property as to which a homestead is or may be set aside.

History: En. Sec. 4, Ch. 51, L. 1969; amd. Sec. 2, Ch. 223, L. 1973.

Amendments

The 1973 amendment deleted "guardian of the minor" preceding "child or children" in the first sentence.

91-5305. Notice—contents. If the allegations and prayer as provided in the preceding section are included in the petition for probate of the will or for letters of administration, the notice of hearing shall include a statement that a prayer for setting aside the estate to the surviving spouse or the child or children as the case may be, is included in the petition.

History: En. Sec. 5, Ch. 51, L. 1969; amd. Sec. 3, Ch. 223, L. 1973.

Amendments

The 1973 amendment deleted "minor" before "child" and "children."

91-5306. Notice—time and manner of giving. If a separate petition is filed under the provisions of this act, notice thereof shall be given in the manner and for the time required for a petition for letters of administration. If a separate petition for probate of the will of the decedent, as for letters of administration of his estate, be filed, such petitions shall be heard at the same time as a petition under this act, and for that purpose the court may continue the hearing on any such petition, so that at least ten (10) days notice is given for each such petition pending before the court.

History: En. Sec. 6, Ch. 51, L. 1969.

91-5307. Special appraiser—duties, powers and compensation. Upon the filing of any petition provided for in this act, unless the whole estate consists of money, the court shall forthwith appoint a special appraiser as provided in section 91-4427, R. C. M. 1947, who shall have the duty, powers and compensation provided by law with respect to the property described in such petition.

History: En. Sec. 7, Ch. 51, L. 1969.

91-5308. Court decree—conditions—assignment to surviving spouse or child—title vested—subject to encumbrances—exemptions limiting assignment. If upon the hearing of any petition provided for by this act, the court finds that the net value of the estate of the decedent, determined as provided in this act, does not exceed the sum of ten thousand dollars ($10,000), as of the date of death of the decedent, and that the expenses of the last illness, funeral and burial charges and expenses of administration and all other creditors have been paid, it shall, by decree for that purpose, assign such estate to the surviving spouse; if there be no such surviving spouse, at the time of such decree, then to the child or children of the decedent; all subject to whatever mortgages, liens or encumbrances upon such estate there may be at the time of the death of the decedent. The title to such estate so assigned or set aside shall vest absolutely in the person or persons named in the decree, subject to mortgages, liens or encumbrances as here provided, and there must be no further proceedings in the administration, unless further estate be discovered. But no surviving spouse or child shall be entitled to such an assignment where the net value of the whole estate transferring to them from the decedent including the value of decedent's interest in any joint property owned by the decedent at the time of his death, and the value of any property transferred by the decedent in contemplation of decedent's death, exceeds, as to such spouse, or such child, respectively, the exemptions provided for them in section 91-4414, R. C. M. 1947.

History: En. Sec. 8, Ch. 51, L. 1969; amd. Sec. 4, Ch. 223, L. 1973.

Amendments

The 1973 amendment substituted "the child or children of the decedent" for "such child or children as may then be minors" in the next to last clause in the first sentence; and deleted "minor" preceding "child" in two places in the third sentence.

91-5309. Jurisdiction of court cannot be collaterally attacked when decree final in the absence of fraud. In the absence of fraud in the procurement, a decree assigning an estate pursuant to the provisions of this act, when it becomes final, is a conclusive determination of the jurisdiction of the court, except when based upon an erroneous assumption of death, and cannot be collaterally attacked.

History: En. Sec. 9, Ch. 51, L. 1969.

91-5310. When estate shall be administered in the usual manner. If the court finds that the net value of the estate determined as provided in this act exceeds the sum of ten thousand dollars ($10,000) or that the surviving spouse, or child or children, are not entitled to an assignment

under this act, or that there is neither a surviving spouse or surviving child of the decedent, the petition to set aside property of the decedent shall be denied, and the estate shall be then administered in the usual manner.

History: En. Sec. 10, Ch. 51, L. 1969; amd. Sec. 5, Ch. 223, L. 1973.

Amendments

The 1973 amendment deleted "minor" before "child" and "children" throughout the section.

91-5311. Pending actions excepted. This act shall not apply to estates of decedents filed or pending in any court prior to the effective date of this act.

History: En. Sec. 11, Ch. 51, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

91-5312. Existing statutes not repealed. This act shall not be construed to repeal any other existing statutes relating to probate proceedings.

History: En. Sec. 12, Ch. 51, L. 1969.

TITLE 92—WORKMEN'S COMPENSATION ACT

Chapter 1. Industrial accident board—creation and powers, 92-101, 92-104, 92-111, 92-116.1, 92-118, 92-121.
2. Defenses—election to come under act, 92-202.1, 92-204.1, 92-206, 92-207.1, 92-208, 92-209.
3. Hazardous occupations to which act applies, Repealed—Section 6, Chapter 443, Laws of 1973.
4. Meaning of words employed in act, 92-410.1, 92-411, 92-413, 92-417, 92-418, 92-418.1, 92-423.1, 92-423.2, 92-435, 92-438.1, 92-439 to 92-441.
6. Claims—liability for injury under different plans of act, 92-601, 92-614 to 92-616.
7. Compensation for various injuries—amount—payment, 92-701.1, 92-702.1, 92-703.1, 92-704.1, 92-706.1 to 92-710.
8. Miscellaneous regulations—powers of board—rehearings and appeals, 92-827, 92-834.
9. Compensation plan No. 1, 92-901, 92-902.
10. Compensation plan No. 2, 92-1004, 92-1005.
11. Compensation plan No. 3, 92-1101 to 92-1105.1, 92-1108, 92-1121.
12. Safety provisions, Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969.
13. Occupational Disease Act, 92-1303 to 92-1305, 92-1310 to 92-1313, 92-1315, 92-1315.1, 92-1321.
14. Rehabilitation of injured workmen, 92-1403.

CHAPTER 1—INDUSTRIAL ACCIDENT BOARD—CREATION AND POWERS

Section 92-101. Name of act—what each part to contain.
92-104. Industrial accident board—compensation—terms and salaries.
92-111. Office and furnishings—quarters.
92-116.1. Administration fund.
92-118. Reports and bulletins which may be published.
92-121. Merit system.

92-101. (2816) **Name of act—what each part to contain.** This act shall be known and may be cited as the Workmen's Compensation Act. Part I (sections 92-101 to 92-843) shall contain those sections which have a general application to the whole of the act, and may be referred to as the "general provisions"; part II (sections 92-901 to 92-908) shall contain those sections which refer to compensation plan number one; part III (sections 92-1001 to 92-1012) shall contain those sections which refer to compensation plan number two; part IV (sections 92-1101 to 92-1123) shall contain those sections which refer to compensation plan number three.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R. C. M. 1921; amd. Sec. 29, Ch. 341, L. 1969.

Amendments

The 1969 amendment deleted "part V (sections 92-1201 to 92-1222) shall contain those sections which may be referred to as the 'safety provisions'" from the end of the section.

Repealing Clause

Section 30 of Ch. 341, Laws 1969 read "Sections 41-1701 through 41-1707, 92-1201 through 92-1210 and 92-1214 through 92-1222, R. C. M. 1947, are repealed."

References

Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-104. (2819) **Industrial accident board—compensation—terms and salaries.** There is hereby created a board to consist of three (3) members. The commissioner of labor and industry shall be one (1) member, the director of the bureau of vocational rehabilitation shall be one (1) member, and one (1) member shall be appointed by the governor, by and with the consent of the senate. The board shall be known as the industrial accident board and shall have the powers, duties, and functions hereinafter conferred. The term of office of the appointed member of the board shall be four (4) years and until his successor shall have been appointed and confirmed. He shall receive an annual salary in such amount as may be specified by the legislative assembly in the appropriation to the industrial accident board, payable monthly and shall be chairman of the board. If the legislative assembly does not specify the maximum salary for the chairman of the board, it shall be fixed by the board after approval by the board of examiners. Before approving any salary increase, the board of examiners shall review the salaries of comparable positions in Montana state government, other states, and private industry. The board shall elect one (1) of their own number as treasurer of the board.

History: En. Sec. 2, Ch. 96, L. 1915; amd. Sec. 1, Ch. 95, L. 1919; amd. Sec. 1, Ch. 254, L. 1921; re-en. Sec. 2819, R. C. M. 1921; amd. Sec. 1, Ch. 161, L. 1953; amd. Sec. 1, Ch. 231, L. 1959; amd. Sec. 1, Ch. 148, L. 1961; amd. Sec. 9, Ch. 225, L. 1963; amd. Sec. 15, Ch. 237, L. 1967.

Amendments

The 1967 amendment substituted "in such amount * * * to the industrial accident board" for "of not more than ten thousand dollars ($10,000)" in the fifth sentence; and inserted the sixth and seventh sentences.

Cross-References

Board abolished and functions transferred, sec. 82A-1005(1).

92-106, 92-107. (2821, 2822) **Repealed.**

Repeal

These sections (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 81, L. 1941; Sec. 1, Ch. 235, L. 1947), relating to bonds of member and employees of the industrial accident commission, were repealed by Sec. 51, Ch. 177, Laws 1965. For new provisions relating to bonds for state officers and employees, see sec. 6-105 et seq.

92-111. (2826) **Office and furnishings — quarters.** The board shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R. C. M. 1921; amd. Sec. 1, Ch. 234, L. 1969.

Amendments

The 1969 amendment deleted ",and shall be provided with suitable rooms, necessary office furniture, stationery, and other supplies" from the end of the first sentence and substituted the present second sentence for one reading, "For the purpose of holding sessions in other places the board shall have power to rent temporary quarters."

92-116. (2831) **Repealed.**

Repeal

Section 92-116 (Sec. 2, Ch. 96, L. 1915; Sec. 1, Ch. 176, L. 1957; Sec. 164, Ch. 147, L. 1963), relating to deposit of fees, fines and assessments and their application to administrative expenses, was repealed by Sec. 2, Ch. 253, Laws 1973. For new law, see sec. 92-116.1.

92-116.1. Administration fund. There is hereby established in the state treasury a workmen's compensation administration fund out of which all costs of administering the Workmen's Compensation and Occupational Disease and Occupational Safety and Health Act are to be paid upon lawful appropriation. The following moneys collected by the workmen's compensation division shall be deposited in the state treasury to the credit of the workmen's compensation administrative fund and shall be used for the administrative expenses of the division:

(1) all fees and fines provided in sections 92-119, 92-820, 92-1334 and 92-1358;

(2) all assessments paid to the division by employers who elect to become bound by plan no. 1 of this act;

(3) all assessments paid to the division of insurers who insure employers under plan no. 2 of this act;

(4) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(5) all assessments levied against the industrial insurance account in the division fund as provided by this act.

The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this act, including the salaries of its members, officers and employees, and the actual and necessary traveling expenses and disbursements of such members, officers and employees, incurred while on the business of the division either within or without the state.

Disbursements from the administration moneys shall be made after being approved by the division upon claim therefor.

The division shall levy against the industrial insurance account in the division fund an assessment in an amount deemed reasonable and necessary to provide adequate administrative funds for the administration of the various acts. The assessment is to be levied against the gross annual direct premium income for the previous fiscal year, less return premiums, and said assessment shall be paid forthwith by the treasurer into the administration moneys in the earmarked revenue fund.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973.

Title of Act

An act providing for amendatory language to an existing funding procedure provided in a new section; and repealing section 92-116, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 253, Laws 1973 read "Section 92-116, R. C. M. 1947, is repealed."

92-118. (2833) Reports and bulletins which may be published. The board shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by section 2 [82-4002] of this act, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R. C. M. 1921; amd. Sec. 41, Ch. 93, L. 1969.

Amendments

The 1969 amendment substituted the reference to the reporting requirements of section 82-4002 for former reference to annual reports.

92-121. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3 (h), or by any other federal law or regulation.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973.

Title of Act

An act providing for inclusion of certain employees of the division of workmen's compensation within the joint merit system.

CHAPTER 2—DEFENSES—ELECTION TO COME UNDER ACT

Section 92-202.1. Employments exempted from coverage.
92-204.1. Election of employer and employee to come under act—action against third party causing injury—right to subrogation.
92-206. Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.
92-207.1. Employments covered.
92-208. Employees bound by act—election.
92-209. Employer shall make election before being bound—employee presumed to have elected.

92-202. (2837) Repealed.

Repeal

Section 92-202 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 121, L. 1925), relating to certain employers for whom defenses are not excluded in personal injury actions, was repealed by Sec. 2, Ch. 492, Laws 1973.

92-202.1. Employments exempted from coverage. This act shall not apply to any of the following employments unless the employer elects coverage under this act:

(1) Household employment.

(2) Casual employment.

(3) Employment of members of an employer's family dwelling in his household.

(4) Employment of sole proprietors or working members of a partnership.

(5) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

(6) Any person performing services in return for aid or sustenance only.

History: En. 92-202.1 by Sec. 1, Ch. 492, L. 1973.

Title of Act

An act providing for exempted employments from coverage under the Workmen's Compensation Act; and repealing section 92-202, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 492, Laws 1973 read "Section 92-202, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Equal Protection

Exclusion of employers engaged in farming and stock raising from the requirements of this act by former section 92-202 was a legitimate classification by the legislature and not in conflict with United States Constitution Fourteenth Amendment. State ex rel. Hammond v. Hager, — M —, 503 P 2d 52.

92-204. (2839) Repealed.

Repeal

Section 92-204 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 138, L. 1933; Sec. 1, Ch. 230, L. 1943; Sec. 2, Ch. 235, L. 1947; Sec. 1, Ch. 270, L. 1969), relating to elective coverage, to exclusion of other remedies, to remedies in tort against third parties, and to subrogation, was repealed by Sec. 2, Ch. 493, Laws 1973. For new law, see sec. 92-204.1.

92-204.1. Election of employer and employee to come under act—action against third party causing injury—right to subrogation. Where both the employer and employee have elected to come under this act, the provisions of this act shall be exclusive, and such election shall be held to be a surrender by such employer and the servants, and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action at law, suit in equity, or statutory or common-law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind the employee himself, and in case of death shall bind his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act shall not be affected by the fact that the injury, occupational disease or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event shall occur to an employee while performing the duties of his employment and such event shall be caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, then such employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. Further provided, that whenever such employee shall receive an injury while performing the duties of his employment and such injury or injuries, so received by such employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then such employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the Workmen's Compensation Act, have a right to prosecute any cause of action he may have for damages against such servants or employees of his employer, causing such injury. Provided, that the employer or insurer shall be entitled to full subrogation for all compensation and benefits paid or to be paid

under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable cost, including attorneys' fees, of such third party action. The insurer may elect not to participate in the cost of the third party action, but as such election is made the insurer shall be deemed to have waived fifty per cent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third party action in his name and for his benefit or that of his personal representative. If the employee or his personal representative institutes such third party action, he shall be entitled to at least one-third (1/3) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with that amount after payment of subrogation. In the event the employer or insurer institutes such third party action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973.

Title of Act

An act providing for election of employers and employees to come under the Workmen's Compensation Act; providing for actions against third party causing injury; providing for a right to subrogation; and repealing section 92-204, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 493, Laws 1973 read "Section 92-204, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Exclusive Remedy

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. State ex rel. Broesder v. Industrial Accident Board, 154 M 178, 461 P 2d 456.

Injured employee receiving workmen's compensation benefits was barred from seeking damages for same injuries in negligence action against coemployee. Madison v. Pierce, 156 M 209, 478 P 2d 860.

Employee who had received workmen's compensation benefits for personal injury was precluded from maintaining action against owner of 98% of corporate stock on theory he was co-employee, since act granted immunity to co-employees. Baird v. Remoir, 156 M 348, 480 P 2d 186.

Where electric company's independent contractor was specifically required to carry workmen's compensation insurance, an employee of the contractor could not bring an action in tort against the electric company for injuries he suffered when a pole broke. Buerkle v. Montana Power Co., 157 M 57, 482 P 2d 564.

Employer's immunity from common-law liability remains even when there have been wanton, willful and intentional violations of safety statutes, and the immunity is abrogated only if the injury itself was intentionally inflicted. Enberg v. Anaconda Co., 158 M 135, 489 P 2d 1036.

Employee, having elected to be bound by workmen's compensation law, and being compensated thereunder, was not entitled to maintain an action against employer for negligence, notwithstanding contention that employer's actions were willful and therefore not within statute barring employee's action against employer for common-law negligence; employee was not third-party beneficiary of safety clauses in contract between employer and United States and could not maintain action against employer for common-law negligence in absence of express promise in contract between employer and United States to pay damages to employee for employer's negligence. Hensley v. United States, 279 F Supp 5-8.

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer and is liable for injury under Workmen's Compensation Act and claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

Joint Venture As Employer

Individual members of joint venture are "employers" within act and as such are immune from tort actions for death of employees of joint venture. Hamman v. United States, 267 F Supp 420.

Right To Sue Third Party

Provision in this section for exclusive remedy under this act does not preclude a defendant who is liable at common law to employee from seeking indemnity from plaintiff's employer as third-party defendant on an indemnity agreement. DeShaw v. Johnson, 155 M 355, 472 P 2d 298.

Plaintiff, who received workmen's compensation benefits for injuries sustained while in the employ of independent contractor, was denied claim against the landowners since they exercised no control over work area. Baird v. Chokatos, 156 M 32, 473 P 2d 547.

The amount of injured workman's recovery from uninsured motorist coverage cannot be reduced by any workmen's compensation benefits received by him; insurance commissioner had no authority to approve a policy providing for such reduction. Sullivan v. Doe, — M —, 495 P 2d 193.

Employee of joint venture was entitled to sue engineering firm in relation of independent contractor as to joint venture for engineering firm's negligence causing injury to employee under that portion of statute (prior to 1969 amendment) giving right of action against third parties when injuries are caused by act of some person other than employer. Hamman v. United States, 267 F Supp 420.

92-206. (2840) **Compensation plan No. 3 exclusive, etc., when a public corporation is the employer.** Where a public corporation is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this act by any public corporation shall be considered to be ordinary and necessary expense of such corporation, and the governing body of such public corporation shall make appropriation of and pay such sums, into the accident or administration fund, as the case may be, at the time and in the manner provided for in this act, notwithstanding that such governing body may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise. Whenever a

contractor is engaged as an employer in the performance of contract work for a public corporation, such employer must elect to be bound by the terms, conditions and provisions of either compensation plan No. 2 or compensation plan No. 3, and the terms, conditions and provisions of the plan chosen shall be compulsory and obligatory upon both employer and employee. Whenever any public corporation neglects or refuses to file with the industrial accident board monthly payroll report of its employees, the board is hereby authorized and empowered to levy an arbitrary assessment upon such public corporation in an amount of twenty-five dollars for each such assessment, which assessments shall be collected in the manner provided in this act for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R. C. M. 1921; amd. Sec. 1, Ch. 410, L. 1971.

Amendments

The 1971 amendment deleted "or any contractor engaged in the performance of contract work for such public corporation" after "is the employer" in the first sentence; and completely rewrote the third sentence.

92-207. (2841) **Repealed.**

Repeal

Section 92-207 (Sec. 3, Ch. 96, L. 1915; Sec. 1, Ch. 119, L. 1939; Sec. 1, Ch. 135, L. 1941; Sec. 3, Ch. 235, L. 1947), relating to coverage of employers in hazardous industries, was repealed by Sec. 2, Ch. 282, Laws 1973.

92-207.1. Employments covered. This act applies to all public employment and to all private employment not expressly exempted by section 92-202.1. If any employer shall fail to make said election, in the time and in the manner herein prescribed, he shall be guilty of a misdemeanor, and punishable by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600) or imprisonment in the county jail for a period not to exceed six (6) months or by both such fine and imprisonment. A failure to provide compensation for each employee shall be deemed a separate offense for the purposes of this act.

History: En. 92-207.1 by Sec. 1, Ch. 282, L. 1973.

Title of Act

An act providing for the nonexempted employments covered by the Workmen's Compensation Act; and providing criminal penalties; and repealing section 92-207, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 282, Laws 1973 read "Section 92-207, R. C. M. 1947, is repealed."

92-208. (2842) **Employees bound by act—election.** Every employee whose employer is bound by the provisions of this act shall become subject to and be bound by the provisions of that plan of compensation which shall have been adopted by his employer except, that pursuant to such rules and regulations as the board shall from time to time promulgate, and subject in all cases to the approval of the board, officers of private corporations may elect not to be bound as employees under the act by a written notice in the form provided by the board, served in the following manner:

1. to 3. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R. C. M. 1921; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971.

Amendments

The 1971 amendment inserted "that pursuant to such rules and regulations as the board shall from time to time promulgate, and subject in all cases to the approval of the board" in the preliminary paragraph.

92-209. (2844) **Employer shall make election before being bound—employee presumed to have elected.** It is the intention of this act that any employer engaged in employments covered herein shall, before being bound by any of the compensation plans herein provided, elect to be so bound thereby, and that the employee shall be presumed to have elected to be subject to and bound by the provisions of the particular plan which may have been adopted by his employer, unless such employee shall affirmatively elect not to be bound by this act, as provided in section 92-208. Provided, that an employer, after having been bound by one or the other of the three plans, may be canceled as an employer under the act, when such employer actually ceases operating and files a signed statement to that effect with the division. Upon such filing the division shall return the deposit of said employer if all premiums are paid.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2844, R. C. M. 1921; amd. Sec. 4, Ch. 235, L. 1947; amd. Sec. 2, Ch. 95, L. 1963; amd. Sec. 1, Ch. 443, L. 1973.

Amendments

The 1973 amendment substituted "employments covered herein" for "hazardous occupations as defined herein" near the beginning of the first sentence; substituted "division" for "board" in two places; substituted "shall return" for "may return" in the final sentence; and made a minor change in phraseology.

92-211. (2846) **Act applies to all inherently hazardous occupations, etc.**

References

Simons v. Fisher, 146 M 526, 409 P 2d 449.

CHAPTER 3—HAZARDOUS OCCUPATIONS TO WHICH ACT APPLIES

(Repealed—Section 6, Chapter 443, Laws of 1973)

92-301 to 92-306. (2847 to 2852) **Repealed.**

Repeal

Sections 92-301 to 92-306 (Secs. 4, 5, Ch. 96, L. 1915; Sec. 2, Ch. 100, L. 1919; Sec. 1, Ch. 117, L. 1925; Secs. 1, 2, Ch. 88, L. 1945), defining the hazardous occupations covered by workmen's compensation, were repealed by Sec. 6, Ch. 443, Laws 1973. For new law, see sec. 92-207.1.

CHAPTER 4—MEANING OF WORDS EMPLOYED IN ACT

Section 92-410.1. Employer defined.
92-411. Employee and workman defined.
92-413. Beneficiary defined.
92-417. Child defined, to include whom.
92-418. Injury or injured defined.
92-418.1. Heart and lung disease of others not excluded by provision relating to firemen.
92-423.1. Wages defined.
92-423.2. Average weekly wage defined.

92-435. Insurer defined.
92-438.1. Independent contractor defined.
92-439. Temporary total disability defined.
92-440. Permanent partial disability defined.
92-441. Permanent total disability defined.

92-402 to 92-407. (2854 to 2859) **Repealed.**

Repeal

Sections 92-402 to 92-407 (Sec. 6, Ch. 96, L. 1915), defining various types of "hazardous employment," were repealed by Sec. 6, Ch. 443, Laws 1973.

92-410. (2862) **Repealed.**

Repeal

Section 92-410 (Sec. 6, Ch. 96, L. 1915; Sec. 2, Ch. 121, L. 1925; Sec. 1, Ch. 50, L. 1965), defining "employer," was repealed by Sec. 2, Ch. 154, Laws 1973. For new law, see sec. 92-410.1.

92-410.1. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

Any employer who contracts to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation or profession of such employer shall be liable for the payment of compensation to the employees of any subcontractor unless the subcontractor primarily liable for the payment of such compensation has coverage under this act. Any employers who shall become liable for such compensation may recover the amount of benefits paid and necessary expenses from the subcontractor primarily liable therein.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973.

Title of Act

An act providing for a definition of "employer" and providing comprehensive coverage extending to subcontractors in the Workmen's Compensation Act, title 92, R. C. M. 1947; and repealing section 92-410, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 154, Laws 1973 read "Section 92-410, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Joint Ventures

Individual members of joint venture are "employers" within meaning of act and as such are immune from tort actions for death of employees of joint venture. Hamman v. United States, 267 F Supp 420.

92-411. (2863) **Employee and workman defined.** "Employee" and "workman" are used synonymously and mean every person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written,

including aliens and also including minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay, including city and town firemen, highway patrolmen, police officers, county sheriffs, deputy sheriffs, constables, truant officers and all peace officers, also all public officers and their deputies, assistants and employees, but excluding any person whose employment is both casual and not in the courses of the trade, business, profession or occupation of his employer, unless such employer has elected to be bound by the provisions of the compensation law, in which case all employees are included, whether their employment is casual or otherwise, and also excluding any employee engaged in household or domestic service.

"Employee" also means a recipient of general relief who is performing work for a county of this state under the provisions of section 71-307, any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program, and any person receiving vocational rehabilitation training, or other on-the-job training under any state or federal vocational training program, whether or not under any appointment or contract of hire with an "employer" as defined in this title, and whether or not receiving payment from a third party.

If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurance carrier and the industrial accident board written notice naming the partners and/or sole proprietors to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making the insurance carrier shall assume salary or wage of such electing "employee" to be five hundred dollars ($500) per month.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R. C. M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971.

Amendments

The 1971 amendment added the language following "section 71-307" in the second paragraph; and added the third paragraph.

Effective Date

Section 2 of Ch. 308, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 15, 1971.

Airport Employee

Plaintiff under a contract of employment with the city-county airport was not an "actual" employee of the state of Montana under the accepted definitions. Kelleher v. State, — M —, 503 P 2d 29.

92-413. (2865) **Beneficiary defined.** "Beneficiary" means and shall include a surviving wife or husband; an unmarried surviving child or children under the age of eighteen (18) years; or an unmarried child under the age of twenty-two (22) years who is a full-time student in an accredited school; an invalid child or invalid children over the age of eighteen (18) years; provided, however, that no invalid child over the

age of eighteen (18) years shall be considered a beneficiary unless dependent upon the decedent for support at the time of injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R. C. M. 1921; amd. Sec. 4, Ch. 121, L. 1925; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973.

Amendments

The 1969 amendment inserted ", or an unmarried child * * * accredited school" after "under the age of eighteen years."

The 1973 amendment inserted "unmarried" in the first clause relating to children; increased the maximum age for student beneficiaries from twenty-one to twenty-two years; deleted "or if no surviving wife or husband then a surviving child or children under the age of eighteen years and an invalid child or invalid children over the age of eighteen years" immediately before the proviso; and made minor clarifying changes in punctuation.

92-417. (2869) **Child defined, to include whom.** "Child" shall include a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, an illegitimate child legitimized prior to the injury.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R. C. M. 1921; amd. Sec. 2, Ch. 92, L. 1969.

Amendments

The 1969 amendment inserted "dependent" before "stepchild."

92-418. (2870) **Injury or injured defined.** "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause, or unusual strain, resulting in either external or internal physical harm, and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection 2 of this section.

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid fireman employed by a municipality, village or fire district as a regular member of a lawfully established fire department, which diseases are caused by over-exertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of four (4) years or more to heat, smoke, chemical fumes, or other toxic gases.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R. C. M. 1921; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973.

Amendments

The 1965 amendment made no apparent change. But see Lupien v. Montana Record Publishing Co., 143 M 415, 390 P 2d 455, 457.

The 1967 amendment inserted "or unusual strain" after "an unexpected cause."

The 1973 amendment divided the former language into the preliminary clause and subsection (1); added "except as provided in subsection 2 of this section" to the end of subsection (1); and added subsection (2).

Repealing Clause

Section 2 of Ch. 270, Laws 1967 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3 of Ch. 270, Laws 1967 provided the act should be in effect from and after its passage and approval. Approved March 2, 1967.

Aggravation of Pre-existing Condition

Four-year-old back injury aggravated by lifting heavy piece of material on job was not injury within purview of statute since claimant must establish that injury for which he seeks to recover is new injury resulting from unexpected cause. Phelan v. Vogel, 148 M 422, 422 P 2d 80.

Aneurysm

Workman who suffered aneurysm when right middle cerebral artery ruptured did not suffer compensable injury as defined in statute in light of evidence that at time of injury, he was engaged in performing ordinary activities of employment which would not cause aneurysm. Miller

v. Sundance Recreation, Inc., 151 M 223, 441 P 2d 194.

Burden of Proof

Claimant who injured hand and received compensation for such injury was properly denied compensation for alleged "disabling cardiac damage" and "cardiac neurosis" since claimant could produce no substantial evidence to support such claim. Verdi v. American Smelting & Refining Co., 154 M 208, 461 P 2d 845.

Heart Attack

Where employee suffered fatal myocardial infarction at work but expert cardiologist testified that the attack was not a result of his employment, recovery was denied even though absolute proof was not possible. Ness v. Diamond Asphalt Co., 143 M 560, 393 P 2d 43.

Relationship between Accident and Disability

Evidence of claimant's mental problems existing prior to accident and doctor's testimony that it was speculation that claimant's failure to return to work was caused by accident was sufficient to sustain judgment denying recovery under statute for claimant's failure to establish direct relationship between industrial accident and physical condition after such accident. Schwartzkopf v. Industrial Accident Board, 149 M 488, 428 P 2d 468.

Spinal Cancer

Workmen's compensation was properly denied where claimant's decedent's death resulted from a spinal cancer that was neither caused by nor contributed to by accident in which decedent fractured his dorsal spine, there being no causal connection between the fracture and the cancerous tumor of the spine which caused death. Stordahl v. Rush Implement Co., 148 M 13, 417 P 2d 95, 98. (Dissenting opinion, 148 M 13, 417 P 2d 95, 99.)

Unusual Strain

Evidence that claimant, while in course and scope of employment, picked up heavy tray of dirty dishes from floor and suffered back strain and testimony of doctor that subsequent back condition resulted from unusual strain was sufficient to support claim of accidental injury within meaning of phrase "unusual strain" as used in statute. Jones v. Bair's Cafes, 152 M 13, 445 P 2d 923, explained in 157 M 328, 331, 485 P 2d 692.

Back injury consisting of a herniated disc, sustained when employee lifted mop pail full of water, resulted from a compensable "unusual strain" within meaning of this section. Robins v. Ogle, 157 M 328, 485 P 2d 692.

DECISIONS UNDER FORMER LAW

Disease Not Traceable to Injury

Where claimant was being treated for bursitis prior to time she lifted box which allegedly caused injury to her shoulder, and surgeon who had operated on shoulder admitted only to the "possibility" of a supraspinatus tendon tear, there was insufficient evidence upon which either the industrial accident board or district court could base award. La Forest v. Safeway Stores, Inc., 147 M 431, 414 P 2d 200.

Unexpected Cause

Claimant, whose routine job was lifting fifteen-pound blocks, was not entitled to compensation for back injury since strain from lifting blocks was not an injury resulting from an "unexpected cause." James v. V. K. V. Lumber Co., 145 M 466, 401 P 2d 282, distinguished in Jones v. Bair's Cafes, 152 M 13, 445 P 2d 923.

92-418.1. Heart and lung disease of others not excluded by provision relating to firemen. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary or respiratory disease while in the course and scope of his employment.

History: En. Sec. 2, Ch. 488, L. 1973.

Title of Act

An act relating to the Workmen's Compensation Act; amending section 92-418, R. C. M. 1947, relating to the definition of "injury" or "injured" to provide for broadened coverage for firemen; and providing for an effective date.

Effective Date

Section 3 of Ch. 488, Laws 1973 provided the act should be in effect from and after its passage and approval. Approved March 27, 1973.

92-422. (2874) **Repealed.**

Repeal

Section 92-422 (Sec. 6, Ch. 96, L. 1915; Sec. 1, Ch. 175, L. 1971), defining the work week, was repealed by Sec. 2, Ch. 445, Laws 1973.

92-423. (2875) **Repealed.**

Repeal

Section 92-423 (Sec. 6, Ch. 96, L. 1915), defining wages, was repealed by Sec. 2, Ch. 444, Laws 1973. For new law, see sec. 92-423.1.

92-423.1. Wages defined. "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week and overtime is not to be considered.

Sick leave benefits accrued by employees of "public corporations" as defined by section 92-434 are considered "wages."

History: En. 92-423.1 by Sec. 1, Ch. 444, L. 1973.

Title of Act

An act providing for a definition of "wages" in the Workmen's Compensation Act; and repealing section 92-423, R. C. M. 1947.

Repealing Clause

Section 2 of ch. 444, Laws 1973 read "Section 92-423, R. C. M. 1947, is repealed."

92-423.2. Average weekly wage defined. "Average weekly wage" means the mean weekly earnings of all employees under covered employment as defined and established annually by the division of employment security of the Montana department of labor and industry. It is established at the nearest whole dollar ($1) number and shall be adopted by the division of workmen's compensation prior to July 1 of each year.

History: En. 92-423.2 by Sec. 1, Ch. 445, L. 1973.

Title of Act

An act providing for a definition of "average weekly wage" in the Workmen's Compensation Act; and repealing section 94-422, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 445, Laws 1973 read "Section 92-422, R. C. M. 1947, is repealed."

92-435. (2887) **Insurer defined.** "Insurer" means any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the "state fund."

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R. C. M. 1921; amd. Sec. 1, Ch. 151, L. 1973.

Amendments

The 1973 amendment added "and includes industrial insurance account created by this act, known as the 'state fund'."

92-438. (2890) **Repealed.**

Repeal

Section 92-438 (Sec. 6, Ch. 96, L. 1915; Sec. 1, Ch. 49, L. 1965), defining "independent contractor," was repealed by Sec. 2, Ch. 251, Laws 1973. For new law, see sec. 92-438.1.

92-438.1. **Independent contractor defined.** An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession or business.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973.

Title of Act

An act providing for a definition of "independent contractor" in the Workmen's Compensation Act; and repealing section 92-438, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 251, Laws 1973 read "Section 92-438, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

General Contractor's Liability

Where injured employee's immediate employer was independent contractor and was required by general employer to carry workmen's compensation insurance under which injured employee received compensation, general employer was immune under former section 92-438 from common-law liability. Ashcraft v. Montana Power Co., 156 M 368, 480 P 2d 812.

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer and is liable under Workmen's Compensation Act, so that claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

92-439. **Temporary total disability defined.** "Temporary total disability" means a condition resulting from an injury as defined in this act that results in total loss of wages and exists until the injured workman is as far restored as the permanent character of the injuries will permit.

History: En. 92-439 by Sec. 1, Ch. 107, L. 1973.

Title of Act

An act providing for a definition of "temporary total disability" in the Workmen's Compensation Act.

92-440. **Permanent partial disability defined.** "Permanent partial disability" means a condition resulting from injury as defined in this act that results in the actual loss of earnings or earning capability less than total that exists after the injured workman is as far restored as the permanent character of the injuries will permit.

History: En. 92-440 by Sec. 1, Ch. 108, L. 1973.

Title of Act

An act providing for a definition of "permanent partial disability" in the Workmen's Compensation Act.

92-441. **Permanent total disability defined.** "Permanent total disability" means a condition resulting from injury as defined in this act that results in the loss of actual earnings or earning capability that exists after the injured workman is as far restored as the permanent character of the injuries will permit and which results in the workman having no reasonable prospect of finding regular employment of any kind in the normal labor market.

History: En. 92-441 by Sec. 1, Ch. 109, L. 1973.

Title of Act

An act providing for a definition of "permanent total disability" in the Workmen's Compensation Act.

CHAPTER 5—COMPENSATION TO CERTAIN HEIRS AND BENEFICIARIES

92-501. (2891) Repealed.

Repeal

Section 92-501 (Sec. 7, Ch. 96, L. 1915; Sec. 7, Ch. 121, L. 1925; Sec. 1, Ch. 53, L. 1937), relating to eligibility as beneficiaries of children, brothers and sisters, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-503 to 92-505. (2893 to 2895) Repealed.

Repeal

Sections 92-503 to 92-505 (Sec. 8, Ch. 96, L. 1915), relating to eligibility as beneficiaries of persons residing outside the United States, were repealed by Sec. 1, Ch. 106, Laws 1973.

CHAPTER 6—CLAIMS—LIABILITY FOR INJURY UNDER DIFFERENT PLANS OF ACT

Section 92-601. Claims must be presented within what time.
92-614. Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.
92-615. Notice of denial of claim by insurer.
92-616. Costs and attorneys' fees payable on denial of claim later found compensable.

92-601. (2899) Claims must be presented within what time. In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the division, as the case may be, within twelve (12) months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement, up to an additional twenty-four (24) months.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R. C. M. 1921; amd. Sec. 1, Ch. 34, L. 1935; amd. Sec. 1, Ch. 264, L. 1973.

Amendments

The 1973 amendment deleted "under oath" following "in writing" in the first paragraph; substituted "division" for "board"; added the second paragraph; and made a minor change in style.

Estoppel to Invoke Statute

Industrial accident board's dismissal of claimant's workmen's compensation claim was proper where action was not commenced until twenty-three months after expiration of limitation period provided for in this section, and claimant failed to produce evidence which would indicate existence of latent injury or actions which would estop employer from invoking statute of limitations. Vetsch v. Helena Transfer & Storage Co., 154 M 106, 460 P 2d 757.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; Meyer v. Noble Drilling, Inc., 259 F Supp 110, 112.

92-604. (2901) Employer liable when lets work, etc.

Common-Law Remedy

Where independent contractor defense is not applicable to general employer, general employer is substituted for immediate employer of claimant and is liable under Workmen's Compensation Act, so

that claimant cannot maintain common-law personal injury action against general employer. Campbell v. Shell Oil Co., 329 F Supp 846.

92-608. (2905) **Compensation in case of death of employee, etc.**

Death from Cause other than Injury

Clause providing that "if the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death" means that if employee is receiving compensation as result of industrial injury and subsequently dies from causes other than injury, liability for further compensation by way of death benefits or continuing disability benefits is cut off; but statute does not terminate liability for compensation accrued prior to death and unpaid at time of death; thus, compensation for permanent partial disability existing between time of injury and time of death is payable even after death. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

"Proximate Cause" Defined

"Proximate cause" as used in statute, means that cause which in natural and continuous sequence, unbroken by any new and independent cause produces death, without which it would not have occurred; it does not mean that injury must be sole cause of death but that injury must be substantial contributing cause in sense that death would not have occurred but for injuries. Head injury received in compensable industrial accident occurring more than two years previous to death was not proximate cause of death in view of evidence that deceased drank to excess before and after accident, that immediate cause of death was suffocation from vomit after drinking bout and that even if deceased had taken six nembutal tablets given on prescription of doctor to relieve headaches, it could not have caused or contributed to death. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

92-610. (2907) **Repealed.**

Repeal

Section 92-610 (Sec. 14, Ch. 96, L. 1915; Sec. 1, Ch. 177, L. 1929), relating to contracts for hospital benefits, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-614. (2911) **Who liable for injuries under the different plans of act and in what amounts, extraterritorial application and reciprocity.** Every employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee who has elected to come under this act, and who shall receive an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any; or, if none, to his major dependents, if any; or, if none, to his minor dependents, if any.

If a workman employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such workman as though he were injured within this state.

If a workman from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them

(a) if the employer and employee are bound by the provisions of the Workmen's Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workmen's Compensation Act of this state is recognized and given effect as the exclusive remedy for workmen employed in this state who are injured while temporarily employed in such other state.

A certificate from an authorized officer of the workmen's compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workmen's Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workmen's Compensation Law of the certifying state.

The industrial accident board shall have authority, with the approval of the governor, to enter into agreements with workmen's compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workmen's compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1967.

Amendments

The 1967 amendment inserted figures after the written numbers in the first paragraph; and added everything after the first paragraph.

92-615. **Notice of denial of claim by insurer.** Every insurer under any plan for the payment of workmen's compensation benefits shall within thirty (30) days of receipt of a claim either accept or deny the claim, and if denied shall inform the claimant in writing of such denial. Biweekly compensation benefits shall be continuously paid until the claimant is fully released by his doctor, returns to work, or no longer suffers a loss of earnings capacity. If the insurer determines to initially deny a claim, or after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after fifteen (15) days written notice to the claimant and the division, and after written approval of the division.

History: En. Sec. 1, Ch. 477, L. 1973.

Title of Act

An act requiring the insurer to accept or deny a claim within thirty (30) days of its filing; payment of weekly compensation until claimant returns to work; termination of compensation only upon notice and division approval; and payment of costs.

92-616. **Costs and attorneys' fees payable on denial of claim later found compensable.** In the event the insurer denies the claim, or terminates a claim that has already been accepted, and the claim is later determined to be compensable either through hearing or appeal to the courts, the insurer shall pay all costs incurred by the claimant, including reasonable attorneys' fees as established by the division.

History: En. Sec. 2, Ch. 477, L. 1973.

CHAPTER 7—COMPENSATION FOR VARIOUS INJURIES—AMOUNT—PAYMENT

Section 92-701.1. Compensation for injuries producing temporary total disability.
92-702.1. Compensation for injuries producing total permanent disability.
92-703.1. Compensation for injuries causing partial disability.
92-704.1. Compensation for injury causing death.

92-706.1. Medical and hospital services approved by the division are furnished.
92-707. Compensation from what date paid.
92-708. Compensation to run consecutively—manner of payment.
92-709. Compensation in case of specified injuries.
92-709.1. Subsequent injury provisions—fund—procedures.
92-710. Occupational deafness.

92-701. (2912) Repealed.

Repeal

Section 92-701 (Sec. 16, Ch. 96, L. 1915; Sec. 4, Ch. 100, L. 1919; Sec. 10, Ch. 121, L. 1925; Sec. 12, Ch. 177, L. 1929; Sec. 1, Ch. 230, L. 1947; Sec. 1, Ch. 7, L. 1949; Sec. 1, Ch. 48, L. 1951; Sec. 1, Ch. 38, L. 1953; Sec. 1, Ch. 253, L. 1955; Sec. 1, Ch. 234, L. 1957; Sec. 1, Ch. 162, L. 1961; Sec. 1, Ch. 149, L. 1965; Sec. 1, Ch. 207, L. 1967; Sec. 1, Ch. 285, L. 1969; Sec. 1, Ch. 174, L. 1971), relating to compensation for temporary total disability, was repealed by Sec. 2, Ch. 471, Laws 1973. For new law, see sec. 92-701.1.

92-701.1. Compensation for injuries producing temporary total disability. Weekly compensation benefits for injury producing total temporary disability shall be sixty-six and two-thirds per cent (66 2/3%) of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed one hundred ten dollars ($110) beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero (0), by an amount equal, as nearly as practical, to one-half (½) the federal periodic benefits for such week.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973.

Title of Act

An act providing compensation for injuries producing total temporary disability under the Workmen's Compensation Act; repealing section 92-701, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 471, Laws 1973 read "Section 92-701, R. C. M. 1947, is repealed."

92-702. (2913) Repealed.

Repeal

Section 92-702 (Sec. 16, Ch. 96, L. 1915; Sec. 5, Ch. 100, L. 1919; Sec. 11, Ch. 121, L. 1925; Sec. 13, Ch. 177, L. 1929; Sec. 2, Ch. 230, L. 1947; Sec. 2, Ch. 7, L. 1949; Sec. 2, Ch. 48, L. 1951; Sec. 2, Ch. 38, L. 1953; Sec. 2, Ch. 253, L. 1955; Sec. 2, Ch. 234, L. 1957; Sec. 2, Ch. 162, L. 1961; Sec. 2, Ch. 149, L. 1965; Sec. 2, Ch. 207, L. 1967; Sec. 1, Ch. 279, L. 1969), relating to compensation for permanent total disability, was repealed by Sec. 2, Ch. 202, Laws 1973. For new law, see sec. 92-702.1.

92-702.1. Compensation for injuries producing total permanent disability. Weekly compensation benefits for injury producing total permanent disability shall be sixty-six and two-thirds per cent (66 2/3%) of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U.S.C. 301 (1935), are payable because of the injury, the weekly benefits payable under this section shall be reduced by the amount of the federal periodic benefits for such week.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973.

Title of Act

An act providing compensation for injuries producing total permanent disability under the Workmen's Compensation Act; repealing section 92-702, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 202, Laws 1973 read "Section 92-702, R. C. M. 1947, is repealed."

92-703. (2914) Repealed.

Repeal

Section 92-703 (Sec. 16, Ch. 96, L. 1915; Sec. 6, Ch. 100, L. 1919; Sec. 2, Ch. 177, L. 1929; Sec. 3, Ch. 230, L. 1947; Sec. 3, Ch. 7, L. 1949; Sec. 3, Ch. 48, L. 1951; Sec. 3, Ch. 38, L. 1953; Sec. 3, Ch. 253, L. 1955; Sec. 3, Ch. 234, L. 1957; Sec. 3, Ch. 162, L. 1961; Sec. 3, Ch. 149, L. 1965; Sec. 3, Ch. 207, L. 1967), relating to compensation for partial disability, was repealed by Sec. 2, Ch. 155, Laws 1973. For new law, see sec. 92-703.1.

92-703.1. Compensation for injuries causing partial disability. Weekly compensation benefits for injury producing partial disability shall be sixty-six and two-thirds per cent (66 2/3%) of the difference between the wages received at the time of the injury and the wages that the injured employee is capable of earning thereafter, subject to a maximum compensation of sixty dollars ($60) a week.

The compensation shall be paid during the period of disability, not exceeding however, five hundred (500) weeks in cases of partial disability; provided, however, that compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in section 92-709 for the loss of the member.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973.

Title of Act

An act providing for compensation for injuries producing partial disability under the Workmen's Compensation Act; repealing section 92-703, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 155, Laws 1973 read "Section 92-703, R. C. M. 1947, is repealed."

DECISIONS UNDER FORMER LAW

Computation of Average Weekly Wage

Former section 92-703 did not incorporate the six-day week component under former section 92-422 in determining pre- or post-injury earnings for partial disability, and in this manner was different from former sections 92-701 and 92-702, which dealt with total disability. Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

Pre- or post-injury compensation for partial disability under former section 92-703 was determined by dividing a man's earnings over a reasonable period of time by the total number of days he worked, excluding all overtime and then multiplying the average daily wage by the number of days actually worked each week. Mahlum v. Broeder, 147 M 386, 412 P 2d 572.

Earning Capacity—Loss of Earnings

Under former section 92-703, coupled with section 92-709, a claimant could have an award of temporary total disability payments during period he was entirely disabled, an award of temporary partial disability payments while his injury was still healing and he was partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

92-704. (2915) Repealed.

Repeal

Section 92-704 (Sec. 16, Ch. 96, L. 1915; Sec. 7, Ch. 100, L. 1919; Sec. 12, Ch. 121, L. 1925; Sec. 14, Ch. 177, L. 1929; Sec. 4, Ch. 230, L. 1947; Sec. 4, Ch. 7, L. 1949; Sec. 4, Ch. 48, L. 1951; Sec. 4, Ch. 38, L. 1953; Sec. 4, Ch. 253, L. 1955; Sec. 4, Ch. 234, L. 1957; Sec. 4, Ch. 162, L. 1961; Sec. 4, Ch. 149, L. 1965; Sec. 1, Ch. 192, L. 1967; Sec. 4, Ch. 207, L. 1967), relating to compensation for injuries causing death, was repealed by Sec. 2, Ch. 203, Laws 1973. For new law, see sec. 92-704.1.

92-704.1. Compensation for injury causing death. Weekly compensation benefits for injury causing death shall be sixty-six and two-thirds per cent (66 2/3%) of the decedent's wages. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. The minimum weekly compensation for death shall be fifty per cent (50%) of the state's average weekly wage, but in no event shall it exceed the decedent's actual wages at the time of his death.

Death benefits shall be paid to a widow or widower for life or until remarriage, and in the event of remarriage two (2) years' benefits shall be paid in a lump sum to the widow or widower. In all cases, benefits shall be paid to beneficiaries as defined in this act.

In cases where it is determined that periodic benefits granted by the Social Security Act, 42 U. S. C. 301 (1935), are payable because of the injury causing death, the weekly benefits payable under this section shall be reduced by the amount of the federal periodic benefits for such week.

History: En. 92-704.1 by Sec. 1, Ch. 203, L. 1973.

Title of Act

An act providing compensation for injuries causing death under the Workmen's Compensation Act; repealing section 92-704, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 203, Laws 1973 read "Section 92-704, R. C. M. 1947, is repealed."

92-706. (2917) Repealed.

Repeal

Section 92-706 (Sec. 16, Ch. 96, L. 1915; Sec. 3, Ch. 196, L. 1921; Sec. 14, Ch. 121, L. 1925; Sec. 15, Ch. 177, L. 1929; Sec. 2, Ch. 139, L. 1931; Sec. 1, Ch. 229, L. 1943; Sec. 2, Ch. 213, L. 1945; Sec. 1, Ch. 41, L. 1949; Sec. 7, Ch. 38, L. 1953; Sec. 5, Ch. 253, L. 1955; Sec. 6, Ch. 234, L. 1957; Sec. 1, Ch. 81, L. 1965; Sec. 1, Ch. 67, L. 1969; Sec. 1, Ch. 359, L. 1971), relating to medical and hospital services and other approved treatment, was repealed by Sec. 2, Ch. 252, Laws 1973. For new law, see sec. 92-706.1.

92-706.1. Medical and hospital services approved by the division are furnished. In addition to the compensation provided by this act and as an additional benefit separate and apart from compensation, the following shall be furnished:

During the first thirty-six (36) months after the happening of the injury, the employer or insurer shall furnish reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained. The division, upon application of the injured workman may, for good cause, grant reasonable extensions of the benefits provided in this section.

All hospitals must submit to the division of workmen's compensation, a schedule of fees and charges for treatment of injured workmen to be in effect for at least a twelve (12) month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least thirty (30) days prior to its effective date and shall not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973.

Title of Act

An act providing for medical and hospital services to be furnished injured claimants under the Workmen's Compensation Act; repealing section 92-706, R. C. M. 1947.

Repealing Clause

Section 2 of ch. 252, Laws 1973 read "Section 92-706, R. C. M. 1947, is repealed."

92-707. (2918) **Compensation from what date paid.** When an injured employee has no wife, child, father, mother, brother or sister residing within the United States who would be entitled to compensation in case of his death, no compensation shall be allowed or paid during the first week of any injury, except as may be required by the provisions of the preceding section, but if disability continues one (1) week, compensation shall be paid from the date of injury. Where the injured employee has a beneficiary or a major or minor dependent residing within the United States who would be entitled to compensation in case of his death, no compensation shall be paid for the first week of any injury, but if disability continues one (1) week, compensation shall be paid from the date of injury; provided, that separate benefits of medical and hospital services shall be furnished from date of injury.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R. C. M. 1921; amd. Sec. 3, Ch. 177, L. 1929; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969.

Amendments

The 1969 amendment substituted "one (1) week" for "six weeks" in the first sentence, and "one (1) week" for "three weeks" in the second sentence.

92-708. (2919) **Compensation to run consecutively—manner of payment.** Compensation shall run consecutively and not concurrently and payment shall not be made for two (2) classes of disability over the same period. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving widow and stepchildren of such widow the compensation shall be divided equally among all beneficiaries. Compensation due to major dependents where there be more than one (1), shall be divided equitably among them and likewise as to minor dependents, and the question of dependency and amount thereof shall be a question of fact for determination by the division.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R. C. M. 1921; amd. Sec. 15, Ch. 121, L. 1925; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973.

Amendments

The 1973 amendment deleted two provisos reading "provided that the total period over which compensation shall be payable for two or more classes of disability, including death, resulting from any com-

pensable injury, shall not extend for a period of more than five hundred (500) weeks, and provided that no compensation shall be paid to a major or minor dependent who did not reside in the United States at the date of the happening of the injury" from the end of the first sentence; and substituted "division" for "board" at the end of the fourth sentence.

92-709. (2920) **Compensation in case of specified injuries.** In case of the following specified injuries, compensation for temporary total disability shall be paid at the weekly rate provided in section 92-701.1, during the healing period, but in no event shall the healing period for loss of a member exceed twenty-six (26) weeks. In addition thereto but in lieu of any other compensation provided by this act, compensation for loss of a member shall be paid at the weekly rate provided in section 92-703.1, and shall be paid for the following periods:

For loss of:

One arm at or near shoulder	280 weeks
One arm at the elbow	240 weeks
One arm between wrist and elbow	220 weeks
One hand	200 weeks
One thumb and the metacarpal bone thereof	75 weeks
One thumb at the proximal joint	37 weeks
One thumb at the second distal joint	25 weeks
One first finger and the metacarpal bone thereof	40 weeks
One first finger at the proximal joint	30 weeks
One first finger at the second joint	22 weeks
One first finger at the distal joint	15 weeks
One second finger and the metacarpal bone thereof	37 weeks
One second finger at the proximal joint	20 weeks
One second finger at the second joint	15 weeks
One second finger at the distal joint	8 weeks
One third finger and the metacarpal bone thereof	25 weeks
One third finger at the proximal joint	15 weeks
One third finger at the second joint	10 weeks
One third finger at the distal joint	5 weeks
One fourth finger and the metacarpal bone thereof	15 weeks
One fourth finger at the proximal joint	11 weeks
One fourth finger at the second joint	8 weeks
One fourth finger at the distal joint	6 weeks
One leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
One leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
One leg between knee and ankle	190 weeks
One foot at the ankle	180 weeks
One great toe with the metatarsal bone thereof	37 weeks
One great toe at the proximal joint	18 weeks
One great toe at the second joint	12 weeks
One toe other than the great toe with the metatarsal bone thereof	16 weeks
One toe other than the great toe at the proximal joint	8 weeks

One toe other than the great toe at second or distal joint	5 weeks
One eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

In all cases of permanent injury to a member less than loss of the member compensation shall be paid for total temporary disability, without limitation as to time under section 92-701.1. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in section 92-703.1. In all other cases of permanent injury, less than total, not included in the above schedule, the compensation for partial disability shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

Loss of vision: Where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, the same as for loss of the eye.

Total loss of use: Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

Disfigurement: The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed twenty-five hundred dollars ($2,500) in addition to any other indemnity benefits payable under this section.

The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two (2) thereof, in one (1) accident, in the absence of conclusive proof to the contrary shall constitute total disability, permanent in character. Provided, however, that the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby; provided, that no payment under this section shall be in lieu of the separate benefit of medical and hospital services.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R. C. M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973.

Amendments

The 1965 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $29 to $35, from $32 to $38, from $36 to $42, from $40 to $46, from $45 to $51, and from $50 to $56; and increased the minimum weekly compensation set forth at the end of the preliminary paragraph from $25.50 to $31.50.

The 1967 amendment increased the maximum weekly compensation set forth in the various clauses in the preliminary paragraph from $35 to $37 per week; from $38 to $40 per week; from $42 to $45 per week; from $46 to $50 per week; from $51 to $55 per week; from $56 to $60 per week; and increased the minimum weekly compensation set forth at the

end of the preliminary paragraph from $31.50 to $34.50.

The 1971 amendment completely rewrote the preliminary paragraph; for previous text, see parent volume and above notes relating to 1965 and 1967 amendments. The 1971 amendment also inserted "In all other cases of permanent injury, less than total, not included in the above schedule, the compensation shall bear such relation to the periods stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule or to total disability (500 weeks)" following the schedule of injuries; and made minor changes in phraseology.

The 1973 amendment changed the statutory reference in the first sentence from 92-701 to 92-701.1; inserted "for loss of a member" twice in the preliminary clause; changed the statutory reference in the second sentence from 92-703 to 92-703.1; inserted the first two sentences following the schedule of payments; inserted "for partial disability" in the third sentence following the schedule of payments; substituted "partial" for "total" in the third sentence following the schedule of payments; deleted two paragraphs between the paragraphs headed "Total loss of use" and "Disfigurement"; substituted "division" for "board" under "Disfigurement"; and made a minor change in style.

DECISIONS UNDER FORMER LAW

Additional Compensation

Under this section, coupled with former section 92-703, a claimant could have had an award of temporary total disability payments during period he was entirely disabled, an award of temporary partial disability payments while his injury was still healing and he was partially able to earn wages, and an additional award for loss of prospective future earnings as the result of permanent partial disability. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Date of Accrual

Indemnity benefits accrue from the date the permanent nature of the disability becomes established. Jones v. Claridge, 145 M 326, 400 P 2d 888.

Partial Loss of Member

Award of 500 weeks' compensation for double vision in one eye was excessive in view of provision in this section allowing only 140 weeks' compensation for total blindness in one eye. Johnson v. Industrial Accident Board, 157 M 221, 483 P 2d 918.

92-709A. Repealed.

Repeal

Section 92-709A (Sec. 1, Ch. 190, L. 1951; Sec. 195, Ch. 147, L. 1963), relating to compensation for second injuries, was repealed by Sec. 2, Ch. 254, Laws 1973. For new law, see sec. 92-709.1.

92-709.1. Subsequent injury provisions — fund — procedures. (1) As used in this act:

(a) "Vocationally handicapped" means a person who has a medically certifiable permanent physical impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if employee should become unemployed considering such factors as the person's age, education, training, experience, and employment rejection.

(b) "Certifying agency" means the section of rehabilitation, division of workmen's compensation.

(c) "Certificate" means documentation issued by the certifying agency to an individual who is vocationally handicapped.

(d) "Fund" means the subsequent injury fund.

(2) A person who wishes to be certified as vocationally handicapped for purposes of this section may apply to the certifying agency on forms furnished by that agency. The certifying agency shall conduct an investigation and shall issue a certificate to a person who meets the requirements for vocationally handicapped certification.

(3) Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit

to the certifying agency, on forms furnished by the agency, all pertinent information requested by the agency. The certifying agency shall acknowledge receipt of the information. Failure to file the required information with the certifying agency within sixty (60) days after the first day of the vocationally handicapped person's employment or retention in employment, precludes the employer from the protection and benefits of this section unless the information is filed before an injury for which benefits are payable under this section.

(4) The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

(5) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care and burial as provided in this act shall be limited to those benefits occurring during the period of one hundred four (104) weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial shall be the liability of the fund.

(6) When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this act applies to all proceedings under this section, except where specifically otherwise provided herein. Not less than ninety (90) nor more than one hundred fifty (150) days before the expiration of one hundred four (104) weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of one hundred four (104) weeks after the date of the injury. The fund, thereafter, may review, at reasonable times, such information as the employer, carrier or industrial insurance fund as regarding the accident, and the nature and extent of the injury and disability.

(7) If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical and burial benefits, the employer, carrier, or industrial insurance fund, shall continue to make payments on behalf of the fund, and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond one hundred four (104) weeks after the date of the injury. However, at any time subsequent to one hundred four (104) weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended thirty (30) days thereafter until the controversy is determined.

(8) The obligation imposed by this section on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier or industrial insurance fund. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing

every six (6) months. If the employer, carrier or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

(9) If an employee was employed or retained in employment under the provisions of this act and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(10) The division within five (5) days of the entry of an order joining the fund as a party defendant shall give the fund written notice thereof not less than twenty (20) days before the date of hearing and shall include the name of employee, employer, and the date of the alleged injury or disability. The fund, named as a defendant, shall have ten (10) days after the date of notification to file objections to being named as party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection, and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(11) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence and defend both on the issue of liability of the employer to the employee and on issue of the liability of the fund.

(12) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

(13) Benefits payable from the fund may be converted into a lump sum payment only upon a substantial showing for an equitable cause, the advisability of the lump sum payment to be determined and approved by the administrator of the division.

(a) In every case of the death of an employee under this act, the insurer shall pay to the fund the sum of one thousand dollars ($1,000). In addition, the division may assess every insurer an amount not to exceed five per cent (5%) of the compensation paid in Montana in the preceding fiscal year. The assessment shall be transmitted annually to the subsequent injury fund by the employer or insurer.

(b) When in judgment of the administrator the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973.

Title of Act

An act providing for a subsequent injury fund in the Workmen's Compensation Act; and repealing section 92-709A, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 254, Laws 1973 read "Section 92-709A, R. C. M. 1947, is repealed, and the assets and liabilities acquired under this section are hereby transferred to the subsequent injury fund."

92-710. Occupational deafness. Regardless of other definitions of injury and time limitations imposed by this act, there shall be compensation awarded for occupational deafness as follows:

(1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment. "Noise" means sound capable of producing occupational deafness. "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(a) Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1000 and 2000 cycles per second. Loss of hearing ability for frequency tones above 2000 cycles per second is not to be considered as constituting disability for hearing.

(b) The per cent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1000 and 2000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100 per cent compensable hearing loss.

(c) In measuring hearing impairment the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels an allowance of one and one-half per cent (1½%) shall be made up to the maximum of one hundred per cent (100%), which is reached at 92 decibels.

(d) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five (5). The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six (6). The final percentage shall be representative of the binaural hearing impairment.

(e) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, one-half decibel for each year of the employee's age over forty at the time of last exposure to industrial noise.

(f) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

(2) No benefits shall be payable for temporary total or temporary partial disability under this act for loss of hearing due to prolonged exposure to noise.

(3) An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss, shall be compensated at the rate provided in section 92-703.1, not exceeding three thousand five hundred dollars ($3,500) in the aggregate from all employers. "Time of injury," "incurred such injury," "date of injury" in such case shall be the date of wage loss.

(4) Subject to the limitations herein contained, there shall be payable for total occupational deafness of one ear, forty (40) weeks of compensation; for total occupational deafness of both ears, two hundred (200) weeks of compensation; and for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

In cases covered by this subsection, "time of injury," "incurred such injury" or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) Transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) Retirement;

(c) Termination of the employer-employee relationship;

(d) Layoff, provided the layoff is complete and continuous for one year;

(e) No claim under this subsection shall be filed, however, until six (6) consecutive months of removal from noisy employment after the time of injury except that under subparagraph (d), such six (6) consecutive months period may commence within the last six (6) months of layoff.

(5) The limitation provisions in this act shall control claims arising under this subsection. Such provisions shall run from the first date upon which claim may be filed, or from the date of subsequent death, provided that no claim shall accrue to any dependent unless an award has been issued or liability admitted.

(6) No payment shall be made to an employee under this section unless he shall have worked in noisy employment for a total period of at least ninety (90) days for the employer from whom he claims compensation.

(7) Any amount paid to an employee under this section by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under subsections (3) and (4). No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this section for total occupational deafness.

(8) Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule hereinabove.

(9) An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deaf-

ness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the six (6) months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

(10) No claim shall be filed, however, unless the employee is exposed eight (8) hours daily and for a period of at least ninety (90) days as above required to noise intensity levels above 90 decibels.

(11) This act shall become effective January 1, 1974.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973.

Compiler's Notes

Section 1 of Ch. 366, Laws of 1971, enacted the section and assigned the section number in lieu of former section 92-710 R. C. M. 1947.

Title of Act

An act to provide compensation for loss of hearing resulting from exposure to industrial noise.

Amendments

The 1973 amendment reduced the hearing loss specified in the third sentence of subdivision (1) (b) from 26 to 25 decibels; reduced the hearing loss specified in the fourth sentence of subdivision (1) (b) and at the end of subdivision (1) (c) from 94 to 92 decibels; increased the hearing loss specified near the beginning of the second sentence of subdivision (1) (c) from 24 to 25 decibels; changed the statutory reference in subdivision (3) from 92-703 to 92-703.1; reduced the noise intensity level specified at the end of subdivision (10) from 100 to 90 decibels; changed the date specified in subdivision (11) from January 1, 1972 to January 1, 1974; and made changes in style.

92-715. (2926) Biweekly payments converted into a lump sum.

Discretion of Board

Board had discretion to order lump-sum payment of award for permanent and total disability in light of medical testimony that disability was partly psychosomatic and chance of rehabilitation would be improved by complete settlement. Legowik v. Montgomery Ward & Co., 157 M 436, 486 P 2d 867.

Industrial accident board did not abuse discretion by denying lump-sum settlement where claimant had no pressing need and his only concerns were to pay attorney's fees expended in pressing claim and to put the lump-sum payment "on interest." Kent v. Sievert, 158 M 79, 489 P 2d 104.

CHAPTER 8—MISCELLANEOUS REGULATIONS—POWERS OF BOARD—REHEARINGS AND APPEALS

Section 92-827. Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.
92-834. How appeal taken—notice—record—trial.

92-807. (2933) Notice of claims for injuries other than death.

References

La Forest v. Safeway Stores, Inc., 147 M 431, 414 P 2d 200.

92-808. (2934) Employers and insurers required to file reports, etc.

Failure to File

Where employee was injured while performing work assigned to him under contract between his employer and second company, failure of second company to file timely injury report with industrial accident board prevented it from invoking exclusive jurisdiction in board as "exclusive remedy" after employee filed civil suit in district court. State ex rel. Broesder v. Industrial Accident Board, 154 M 178, 461 P 2d 456.

92-810. (2936) **Repealed.**

Repeal

Section 92-810 (Sec. 17, Ch. 96, L. 1915), relating to mortality tables, was repealed by Sec. 1, Ch. 106, Laws 1973.

92-821. (2947) **Jurisdiction of board to hear disputes and controversies.**

Fraudulent Claim

Award of lump-sum settlement based on a petition forged by employer's claims manager did not determine injured employee's right to lump-sum settlement, and employee had no cause of action against the employer arising out of claims manager's subsequent forgery and conversion of the lump-sum check. Lewis v. Anaconda Co., — M —, 503 P 2d 535.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-825. (2951) **When a nominal disability indemnity may be awarded.**

Degree of Permanent Physical Impairment Unknown

Where the board found that a compensable impairment existed, but the degree of permanent physical impairment was unknown, it was proper to award nominal disability indemnity under this section. Benoit v. Murphy Corp., 143 M 463, 391 P 2d 350.

92-826. (2952) **Jurisdiction to rescind or amend any order, etc.**

Compromise Settlement

Where employee sought, agreed to and accepted a full and final compromise settlement of his compensation claim, board was precluded under this section from reconsidering his claim. State ex rel. Montana Phosphate Products Co. v. Industrial Accident Board, 156 M 466, 481 P 2d 684.

92-827. (2953) **Record of proceedings to be kept and testimony to be taken down—attorney's fees—transcripts on appeal—indigent claimants.** A full and complete record shall be kept of all proceedings and hearings had before the board, or any member thereof, of any formal hearing had, and all testimony produced before the board or any member thereof shall be taken down by a stenographic reporter appointed by the board, and the parties shall be entitled to be heard in person or by attorney.

Whenever the claimant or plaintiff is represented by an attorney either before the board or the courts, the industrial accident board may, in its discretion or upon the application of the claimant or plaintiff, fix the amount of the attorney fee of the attorney representing the claimant or plaintiff, and the fee fixed by the board shall be paid by claimant or plaintiff.

In cases of an action to review any order or decision of the board, a transcript of such testimony, together with all exhibits, and of the pleadings, records, and proceedings in the cause shall constitute the record of the board. Provided further, that the board must furnish a copy of such testimony, written exhibits, pleadings, records and proceedings to the claimant without cost.

After judgment on appeal to the district court, an indigent claimant, deeming himself aggrieved, may file in said court an affidavit that he does not have money, property or credit sufficient to pay for the cost of a transcript on appeal to the supreme court, and the clerk of court serve a

copy by registered mail, return receipt requested, on the industrial accident board; the affidavit shall be prima facie evidence of the truth of the facts stated therein; in the event the board contest the allegations, the court shall fix a date for the hearing thereof, not less than five nor more than ten days from date of filing, and shall make its determination of the controversy, and if it be found and adjudged that the claimant does not have sufficient money, property or credit to pay for such transcript, the order shall direct the industrial accident board to furnish the same at its expense to be paid from the industrial accident administrative earmarked revenue account.

All proceedings on such appeal, including preparation, presentation and settlement of the bill of exceptions, shall be continued pending determination of the controversy.

If the board does not contest the allegations of the claimant's affidavit within ten days from receipt, it shall be deemed in default and the court shall make its order in favor of claimant on expiration of such period.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2953, R. C. M. 1921; amd. Sec. 4, Ch. 139, L. 1931; amd. Sec. 3, Ch. 162, L. 1937; amd. Sec. 1, Ch. 170, L. 1959; amd. Sec. 1, Ch. 111, L. 1965.

Amendment

The 1965 amendment added the fourth, fifth and sixth paragraphs.

Repealing Clause

Section 2 of Ch. 111, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Attorney's Fees

Attorney who charged fees in excess of amount ordered by industrial accident board pursuant to this section was properly subject to discipline by public censure. In re Porter, 156 M 190, 478 P 2d 866.

92-829. (2955) Application for rehearing.

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

92-830. (2956) Board may at any time diminish or increase an award.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-832. (2958) Application for rehearing or appeal, etc.

Payment Pending Appeal

Payment of benefits by insurance carrier in accordance with order of industrial accident board did not render appeal from such order moot and subject to dismissal, since under this section order of board must be carried out by carrier unless it makes application for stay, in view of fact that receipt for payment stated that it was "subject to claimant's appellate rights." Bigar v. Tri-State Sand & Gravel, Inc., 157 M 456, 486 P 2d 881.

92-833. (2959) Appeal to district court.

Jurisdiction of District Court

District court had no jurisdiction to hear claimant's appeal from the decision of the industrial accident board when the court's

seat was in neither the county of the employer's residence nor the county of the place of the accident. State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

92-834. (2960) **How appeal taken—notice—record—trial.** Said appeal shall be taken by serving a written notice of said appeal upon the chairman of such industrial accident commission, or upon any other member thereof, which said service shall be made by the delivery of a copy of such notice to such chairman or member, and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of such party as said party shall have left with the board. If such party shall have left no address with the board, then no service upon such party shall be required. The order of filing and service of said notice is immaterial. Immediately upon service upon said board of said notice, the said board shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said board, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the board and upon the appellant, and also upon the adversary party, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the board, as certified to the court by it. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the board regularly pursued its authority, and whether or not the findings of the board ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

History: En. Sec. 22, Ch. 96, L. 1915; re-en. Sec. 2960, R. C. M. 1921; amd. Sec. 7, Ch. 149, L. 1965.

Amendment

The 1965 amendment made no apparent change.

Repealing Clause

Section 8 of Ch. 149, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 9 of Ch. 149, Laws 1965 read "This act shall be in full force and effect from and after the 1st day of July, 1965."

Additional Evidence

Where a final decision to stop payments under workmen's compensation had been made by the industrial accident board, testimony of claimant's personal physician as to his examination of her more than six years earlier was relevant and should have been reconsidered by the board, "good cause" thus having been shown. Johnson v. Industrial Accident Board, 157 M 221, 483 P 2d 918.

Court Required to Make Findings of Fact and Conclusions of Law

While there is no rule of law requiring the district court to adopt the proposed findings and conclusions of either litigant on appeal in a workmen's compensation case, and the court may request that the litigants submit such findings, or litigants may submit them without a request by the court, it is clear that the legislature intended that the court make findings of fact and conclusions of law in all cases on appeal. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

Simons v. C. G. Bennett Lumber Co., 146 M 129, 404 P 2d 505.

92-835. (2961) **Appearances—setting aside conclusions, orders, etc.**

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

92-838. (2964) **Court to give liberal construction to act.**

Failure to List Children in Claim

Where claimant failed to list all of his children in his claim for compensation it did not constitute a waiver of the claim. Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

References

State ex rel. Glacier General Assurance Co. v. District Court, 143 M 569, 393 P 2d 54.

CHAPTER 9—COMPENSATION PLAN NO. 1

Section 92-901. When and how employer may elect to adopt—direct payment to employee.
92-902. Proof of solvency of employer electing plan No. 1 to be filed—payroll assessments.

92-901. (2970) **When and how employer may elect to adopt—direct payment to employee.**

COMPENSATION PLAN NUMBER ONE

An employer may elect to be bound by compensation plan No. 1, upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this act provided for, and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective, may, by order of the division, make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R. C. M. 1921; amd. Sec. 2, Ch. 443, L. 1973.

Amendments

The 1973 amendment deleted "in the industries, trades, works, occupations, or employments in this act specified as hazardous," following "employer" at the beginning of the section; substituted "division" for "board" in two places; and made minor changes in phraseology.

92-902. (2971) **Proof of solvency of employer electing plan No. 1 to be filed—payroll assessments.** Every employer who has elected to be bound by compensation plan No. 1, shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

The division may levy an assessment in an amount not to exceed three-hundredths of one per cent (.03%) of the annual payroll of such employer in Montana, for the preceding fiscal year, which assessment shall be paid to the division by the employer at the time of filing of proof of solvency.

No assessment shall be in an amount less than two hundred dollars ($200).

If the employer had no payroll in Montana for the entire preceding fiscal year, the assessment shall be based on the estimated payroll for the year in which election is made.

The division shall pay the amounts so collected into the state treasury.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R. C. M. 1921; amd. Sec. 5, Ch. 139, L. 1931; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973.

Amendments

The 1965 amendment increased the minimum assessment specified in the third paragraph from $10 to $75.

The 1969 amendment increased the minimum assessment specified in the third paragraph from $75 to $200.

The 1971 amendment substituted "may" for "shall" before "levy an assessment" in the second paragraph; increased the maximum assessment rates specified in the second paragraph from two hundredths to three hundredths of one per cent; and made minor changes in phraseology.

The 1973 amendment deleted "now or hereafter engaged in the state of Montana, in the industries, trades, works, occupations, or employments herein mentioned" after "employer" near the beginning of the section; substituted "division" for "board" in three places and for "treasurer of the board" in the final paragraph; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 183, Laws 1965 repealed all acts and parts of acts in conflict therewith.

CHAPTER 10—COMPENSATION PLAN NO. 2

Section 92-1004. Agreement to be contained in policies of insurance—deposit of bonds.
92-1005. Policies made subject to this act—assessment of insurers.

92-1002. (2979) Duty of employer electing plan No. 2, etc.

References

Meyer v. Noble Drilling, Inc., 259 F Supp 110, 115.

92-1004. (2981) Agreement to be contained in policies of insurance—deposit of bonds. No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this act provided for, and that the obligation shall not be affected by any default of the insured after the injury, or by any default in the giving of any notice required by such policy or by this act or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation. Before issuance of any policy by an insurer as herein authorized, such insurer must deposit with the treasurer of the industrial accident board, bonds of the United States or the state of Montana, or of any school district, county, city or town in the state of Montana, or a corporate surety bond made out to and approved by the board, in an amount not less than five thousand dollars ($5,000.00) or more than one hundred thousand dollars ($100,000), as the industrial accident board may determine. If any insurer shall fail to discharge any liability after the amount thereof shall be determined by the board, and within the time limited by the board, it shall be the duty of the board to convert said bonds, or such part thereof as is necessary, into cash, and from the proceeds liquidate such liability; and thereafter said insurer must make an additional deposit to meet any deficiency caused thereby. It is intended hereby to give the industrial accident board the discretion in the matter of whether an insurer has failed to discharge any liability.

History: En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R. C. M. 1921; amd. Sec. 11, Ch. 177, L. 1929; amd. Sec. 1, Ch. 141, L. 1971.

Amendments

The 1971 amendment inserted the clause relating to corporate surety bonds in the third sentence; and increased the maximum deposit under the third sentence from $20,000 to $100,000.

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

92-1005. (2982) **Policies made subject to this act—assessment of insurers.** Every policy for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act. No insurer shall enter into any such policy of insurance unless its forms shall have been approved by the board, and as otherwise provided by law.

On or before the first day of July of each year, the board shall assess and each insurer shall pay to the board not to exceed three and one-fourths per cent (3¼%) of its gross annual direct premiums collected in Montana on policies of insurance insuring employers who elected to become bound by the compensation plan No. 2 during the previous calendar year, less return premiums. No such assessment shall be less than two hundred dollars ($200). The treasurer of the board shall pay the amounts so collected into the state treasury. Payments by such insurers under this section shall be considered as items of loss for rate-making purposes.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R. C. M. 1921; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971.

Amendments

The 1971 amendment increased the minimum assessment specified in the second sentence of the second paragraph from $10 to $200.

CHAPTER 11—COMPENSATION PLAN NO. 3

Section 92-1101. What necessary in electing plan No. 3—percentage of payroll to be paid under plan.
92-1102. Permitting employers to elect to comply and come under the provisions of this act.
92-1103. Manner of electing—contract or policy of insurance—payment of premium.
92-1104. Classifications by board.
92-1105. Intent and purpose of plan No. 3.
92-1105.1. Advanced rate for dangerous places of employment.
92-1108. In case of default, rates to be advanced twenty-five per cent (25%).
92-1121. What included in computing compensation in employment.

92-1101. (2990) **What necessary in electing plan No. 3—percentage of payroll to be paid under plan.**

COMPENSATION PLAN NUMBER THREE

Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the industrial accident board, pay to the industrial accident board a premium based on a percentage of his payroll as determined by the industrial accident board which shall be a member of a rating organization in accordance with the provisions of this act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R. C. M. 1921; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969.

Compiler's Notes

This section was amended twice in 1969, once by Ch. 233 and once by Ch. 329. Neither amendatory act mentioned nor included the changes made by the other. Since the two amendments do not appear to conflict, the compiler has made

a composite section incorporating both amendments.

Amendments

Chapter 233, Laws of 1969, substituted "at the times and in the manner prescribed by the industrial accident board" for "in the manner herein specified."

Chapter 329, Laws of 1969, inserted "which shall be a member of a rating organization."

92-1102. (2990.1) **Permitting employers to elect to comply and come under the provisions of this act.** An employer shall comply with the provisions of this act, in which event he will not be liable to respond in damages at common law or by statute for injury or death of an employee and shall enjoy the benefits and privileges of this act. The employee of the employer is considered to come under the provisions of this act unless the employee executes and files with the division on proper forms to be furnished for that purpose, a specific election not to be so bound, in which event he shall not enjoy the benefits or privileges of this act until the election is withdrawn.

History: En. Sec. 17, Ch. 121, L. 1925; amd. Sec. 177, Ch. 147, L. 1963; amd. Sec. 4, Ch. 443, L. 1973.

Amendments

The 1973 amendment deleted "engaged in farming, dairying, agriculture, viticulture, horticulture, stock or poultry raising," following "employer" at the beginning of the first sentence; substituted "shall comply with the provisions of this act" in the first sentence for "may elect to comply with the provisions of plan 2 or 3 of this act and pay the premiums provided in the act"; deleted "during the period covered by such premiums" following "death of an employee" near the end of the first sentence; substituted "division" for "board" in the second sentence; deleted the last sentence of the former section; and made minor changes in style and phraseology.

92-1103. (2991) **Manner of electing—contract or policy of insurance—payment of premium.** The industrial accident board shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the industrial accident board a contract or policy of insurance in a form approved by the board. The premium thereon shall be paid by the employer, to the industrial accident board at such times as the board shall prescribe and shall be paid over by the board to the state treasurer to the credit of the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R. C. M. 1921; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969.

Amendments

The 1969 amendment inserted the present first sentence.

Repealing Clause

Section 3 of Ch. 233, Laws 1969 read "Sections 92-1106 and 92-1107, R. C. M. 1947, are repealed."

Cross-References

Policy to provide for freedom of choice of professional practitioner, sec. 40-4108.

92-1104. (2992) **Classifications by board.** The industrial accident board is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience, and as a member of a rating organization as is otherwise provided for in this code,

may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until thirty (30) days after the date of the order making such change.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R. C. M. 1921; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969.

Amendments

The 1969 amendment inserted "and as a member of a rating organization as is otherwise provided for in this code."

Cross-References

Industrial accident board to be member of rating organization, sec. 40-5616.

92-1105. (2993) **Intent and purpose of plan No. 3.** It is the intent and purpose of compensation plan No. 3 that each industry, trade, occupation or employment coming under the provisions of said plan shall be liable to pay for injuries happening to employees coming under the provisions of the Workmen's Compensation Act.

All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the board as a member of a rating organization into classes, whose rates may be readjusted at such times as the board as a member of such rating organization may determine. Separate accounts shall be kept of the amounts collected and expended in each class for determining rates but for payment of compensation and dividends the industrial insurance account shall be one and indivisable. The board as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of a solvent industrial insurance fund, and the creation of surplus and reserves and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk, and shall take advantage of the experience and information afforded to it as a member of such rating organization.

The board in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an adequate catastrophe reserve, reserves adequate to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the board as a member of such rating organization.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R. C. M. 1921; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969.

Amendments

The 1969 amendment, in the second sentence of the third paragraph, inserted "as a member of a rating organization" after "board"; inserted "as a member of such rating organization" after "board" in the second and fourth sentences, and added "and shall take advantage * * * rating organization" to the fourth sentence; and, in the fourth paragraph, added "as a member of such rating organization."

Separability Clause

Section 23 of Ch. 329, Laws 1969 read

"The provisions of this act shall be severable; and if any of its sections, provisions, exceptions, sentences, clauses, phrases or parts be held unconstitutional or void, the remainder of this act shall continue in full force and effect."

92-1105.1. Advanced rate for dangerous places of employment. If by reason of poor or careless management, or otherwise, any place of employment be unduly dangerous in comparison with other like places of employment, and the employer operating the same shall not have complied with the safety provisions of the Montana Safety Act, and such employer shall be under compensation plan number 3, the board, in addition to any other penalty provided, shall advance the rate upon such place of employment fifty (50) per cent, and such advanced rate shall continue and be in force until such place of employment shall have ceased to be unduly dangerous in comparison with other like places of employment and such employer shall have obtained a certificate of the board.

History: En. 92.1105.1 by Sec. 28, Ch. 341, L. 1969.

92-1106, 92-1107. (2994, 2995) **Repealed.**

Repeal

Sections 92-1106 and 92-1107 (Sec. 40, Ch. 96, L. 1915; Sec. 179, Ch. 147, L. 1963), relating to payments under compensation plan No. 3, were repealed by Sec. 3, Ch. 233, Laws 1969.

92-1108. (2996) **In case of default, rates to be advanced twenty-five per cent (25%).** Any employer who is in default in the observance of any order of the board, issued pursuant to the provisions of sections 92-1101 to 92-1105, inclusive, shall, in addition to any other penalty provided by this act, be charged an advance of twenty-five per centum (25%) over the established rate, and such advanced rate shall continue and be in force until such employer shall have ceased to be in such default.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R. C. M. 1921; amd. Sec. 4, Ch. 233, L. 1969.

Amendments

The 1969 amendment substituted section "92-1105" for "92-1107."

92-1112. (3000) **Investment of reserve—payment of installments.**

Cross-References

Board of land commissioners functions transferred, sec. 82A-205(1)(i).

92-1121. (3009) **What included in computing compensation in employment.** In computing the payroll, the entire compensation received by every workman employed under this act, shall be included, whether it be in the form of salary, wage, piecework, or otherwise, and whether payable in money, board or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R. C. M. 1921; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973.

Amendments

The 1971 amendment deleted a second sentence reading "Salary and wages paid during actual vacation period shall not be computed or assessed."

The 1973 amendment substituted "under this act" for "in the hazardous occupations enumerated in this act."

Repealing Clause

Section 6 of Ch. 443, Laws 1973 read "Sections 92-301 through 92-306 and 92-402 through 92-407, R. C. M. 1947, are repealed."

CHAPTER 12—SAFETY PROVISIONS

(Repealed—Sections 6 to 8, Chapter 176, Laws of 1957; Section 30, Chapter 341, Laws of 1969)

92-1201 to 92-1210. (3012 to 3021) Repealed.

Repeal

Sections 92-1201 to 92-1210 (Secs. 50, 51, Ch. 96, L. 1915), relating to safety provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

92-1214 to 92-1222. (3025 to 3033) Repealed.

Repeal

Sections 92-1214 to 92-1222 (Secs. 53, 54, Ch. 96, L. 1915), relating to safety provisions, were repealed by Sec. 30, Ch. 341, Laws 1969.

CHAPTER 13—OCCUPATIONAL DISEASE ACT

Section 92-1303. Definitions.
92-1304. Occupational disease.
92-1305. Proximate causation.
92-1310. Liability of last employer, exception.
92-1311. Payment of compensation—exceptions and limitations.
92-1312. Claims must be presented within what time.
92-1313. Notice of disability or death.
92-1315. Procedure for medical examination.
92-1315.1. Medical definition of totally disabling pneumoconiosis.
92-1321. Compensation benefits payable under this act.

92-1303. Definitions. Except as in this section and elsewhere in this act expressly set forth, the definitions contained in the Workmen's Compensation Act shall apply to terms and words herein contained.

1. to 4. * * * [Same as parent volume.]

5. "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease as defined in this act from performing any work for remuneration or profit. "Silicosis," as defined in this act, when complicated by active pulmonary tuberculosis, shall be presumed to be total disablement. "Disability," "disabled," "total disability," or "totally disabled" shall be synonymous with "disablement," but they shall have no reference to "partial permanent disability." Provided that in the event of death or disability due to pneumoconiosis the following shall apply:

a. If a miner who is suffering or has suffered from pneumoconiosis was employed for ten (10) years or more in one (1) or more coal mines there shall be a rebuttable presumption that his pneumoconiosis arose out of such employment.

b. If a deceased miner was employed for ten (10) years or more in one (1) or more coal mines and died from a respirable disease there shall be a rebuttable presumption that his death was due to pneumoconiosis.

c. If a miner is suffering or suffered from a chronic dust disease of the lung which (1) when diagnosed by chest roentgenogram yields one (1) or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization, (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, or (3) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in clause (1) or (2) if diagnosis had been made in the manner prescribed in clause (1) or (2) then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, as the case may be.

6. to 25. * * * [Same as parent volume.]

26. For the purpose of this act "silicosis" is defined as a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing characteristic X-ray pattern, and by variable clinical manifestations.

a. For the purpose of this act "pneumoconiosis" is defined as a chronic dust disease of the lung arising out of employment in coal mines, and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

27. and 28. * * * [Same as parent volume.]

History: En. Sec. 3, Ch. 155, L. 1959; amd. Sec. 1, Ch. 190, L. 1971.

Amendments

The 1971 amendment inserted the proviso relating to pneumoconiosis, including paragraphs a through c, in subdivision 5; and inserted paragraph a defining pneumoconiosis in subdivision 26.

92-1304. Occupational disease. The term "occupational disease" shall mean all diseases arising out of or contracted from and in the course of employment.

History: En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971.

Amendments

The 1965 amendment added "asbestosis" to item 1.

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

Repealing Clause

Section 2 of Ch. 95, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Hydrocarbon Inhalation

Evidence was insufficient to sustain automobile mechanic's allegation that his exposure to concentration of diesel smoke resulted in his contracting emphysema or aggravating a pre-existing emphysema condition because of hydrocarbon inhalation. Aho v. Burkland Studs, Inc., 153 M 1, 452 P 2d 415.

92-1305. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

1. to 5. * * * [Same as parent volume.]

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971.

Amendments

The 1971 amendment deleted from the introductory clause a reference to the preceding section.

92-1310. **Liability of last employer, exception.** Where compensation is payable for an occupational disease the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust for a period of ninety (90) actual workshifts or more after July 1, 1958. Provided that in the case of pneumoconiosis any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof, from a person who was an operator of such mine on or after December 30, 1969, is liable for, and must secure the payment of, all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine; and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971.

Amendments

The 1971 amendment added the proviso relating to pneumoconiosis.

92-1311. **Payment of compensation—exceptions and limitations.** A. Compensation shall be paid to every employee who becomes disabled by reason of occupational disease arising out of his employment, subject to the following conditions; and when claims are presented and notices given in accordance with the limitations of sections 92-1312 and 92-1313.

1. * * * [Same as parent volume.]

2. No compensation shall be paid for a disease other than silicosis or due to ionizing radiation unless total disability results within one hundred twenty (120) days from the last day upon which the employee actually worked for the employer against whom compensation is claimed; provided that the board upon good cause shown may waive this limitation in the interest of justice, but in any case said period may not be extended to more than one year from the date of last employment by the said employer.

3 to 5. * * * [Same as parent volume.]

B. The compensation shall be paid to the beneficiary and dependents of every employee covered by this act in cases where death results from an occupational disease arising out of his employment subject to the following conditions.

1 to 3. * * * [Same as parent volume.]

4. No compensation shall be paid for death from any occupational disease other than silicosis or due to ionizing radiation unless death results within one (1) year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous

total disability from an occupational disease other than silicosis or ionizing radiation for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the board. In such cases compensation shall be paid if death results within three (3) years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

5. * * * [Same as parent volume.]

C. * * * [Same as parent volume.]

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "or due to ionizing radiation" following "silicosis" in paragraphs A 2 and B 4.

92-1312. Claims must be presented within what time. The provisions of section 92-601 shall not apply to claims filed under this act.

It is hereby provided in the case of disability resulting from occupational diseases as herein defined, including silicosis, that all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer or the board as the case may be within thirty (30) days after claimant has filed his notice of disability as provided in section 92-1313. In the case of death from an occupational disease, as herein defined, including silicosis, all claims therefor shall be forever barred unless the same shall be presented in writing under oath to the employer, the insurer, or the board, as the case may be, within thirty (30) days of filing the notice of death as provided in section 92-1313. For the purpose of this act a claim for benefits on account of total disability or death of a miner due to pneumoconiosis is deemed to be timely filed if it is filed within three (3) years of the discovery of the total disability or the date of death.

Claims shall be filed in triplicate on forms to be furnished by the board and may be accompanied by a medical report of the claimant's attending physician. The provisions of this section as to the time for presenting claims for compensation shall prevail over any other provisions of this act to the contrary.

History: En. Sec. 12, Ch. 155, L. 1959; amd. Sec. 3, Ch. 190, L. 1971.

Amendments

The 1971 amendment added the last sentence, relating to pneumoconiosis claims, to the first paragraph.

92-1313. Notice of disability or death. The provisions of section 92-807 shall not apply to cases of disability or death from occupational diseases as in this act defined.

Notice of disability or death in respect to which compensation is payable under this act, except disability or death resulting from silicosis, shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee, his beneficiaries, or his dependents knew or should have known the nature of the impairment or cause of death and its relationship to the employment, but in no event, except in the case of disability or death due to ionizing radiation, shall notice be filed more than one year after the last day upon which the

employee actually worked for the employer against whom compensation is claimed.

In cases of disability resulting from silicosis which are compensable under this act, notice of such disability shall be given to the employer, the insurer, or the board, as the case may be, within thirty (30) days after the employee knew or should have known of the nature of the impairment and its relationship to employment, but in no event shall such notice be filed more than four (4) years after the last date upon which the employee actually worked for the employer against whom compensation is claimed.

In cases of a death from silicosis which is compensable under this act, notice of such death shall be given to the employer, the insurer, or the board, within thirty (30) days after the employee's beneficiaries or his dependents knew or should have known of the cause of death and its relationship to the employment, but in no event shall such notice be filed more than one (1) year after such death.

Such notice shall be valid only if filed in writing on forms to be furnished by the board, and shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the disability or death, and shall be signed by the employee or by some other person on his behalf; or in case of death by any person claiming to be entitled to compensation for such death or by some person on his behalf.

Except if death occurs during the period of total disability described in section 92-1311, B.3., in which case the period of notice may be extended to the term of seven (7) years from the last day of said employment.

History: En. Sec. 13, Ch. 155, L. 1959; amd. Sec. 2, Ch. 92, L. 1965.

Amendment

The 1965 amendment inserted "except in the case of disability or death due to ionizing radiation" in the second paragraph.

92-1315. Procedure for medical examination. A. In order to determine the validity of claims made pursuant to the provisions of this act, the following procedure and no other shall be followed in the course of the medical examination of the claimant for official report to said board, claimant, employer, or insurer, as the case may be.

1. Upon the filing of a claim by a claimant for occupational disease disability, other than silicosis or pneumoconiosis, the board shall direct a member from said "medical committee" to examine and determine the disability of the claimant and submit a written report thereon to the board.

Upon the filing of a claim for compensation for silicosis disability under this act, the board shall direct an examination of and report to the board upon the claimant by said "pulmonary specialists," or one of them, including such X-ray and other pathological examination and tests as in the opinion of such specialist or specialists may be necessary for the purpose of determining diagnosis, disablement, and the nature and type of medical treatment, hospitalization and other care required. If the claim

is not controverted as to any medical fact, the examination and report of one of said specialists, shall be deemed the examination and report of all "pulmonary specialists." If the claim is controverted as to any medical fact, the report shall be made by all of said specialists after a physical examination by at least two (2) of them. The findings and opinions of a majority of the number of said specialists then appointed shall constitute the findings and opinions of all of them. The contents of the report of said "pulmonary specialists" when placed in the record shall constitute prima facie evidence of fact as to the matter therein contained. The "pulmonary specialists" or any one (1) of them making the report shall be subject to examination upon demand of any interested parties.

The "pulmonary specialists," or any one (1) of them in order to assist in reaching a conclusion may require the attending physician or director of a hospital or a sanitarium or other place in which treatment or care is being given, or has been given, to attend at a convenient time and place to consult with said specialists, or any one of them and to describe the nature and type of care and treatment and furnish any other evidence which said specialist or specialists desire.

Upon receiving the written report of such examining physician or physicians so appointed, the board shall forthwith determine whether or not the claimant shall receive the benefits pursuant to this act and it shall forward notice of its determination together with a true and correct copy of said medical report to the claimant and the employer or insurer as the case may be.

2. * * * [Same as parent volume.]

B. The standards for determining death or total disability due to pneumoconiosis are as follows:

1. Total disability defined. A miner is under a total disability due to pneumoconiosis if: (a) He is suffering or suffered from a chronic dust disease of the lung which: (1) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization; or (2) when diagnosed by biopsy or autopsy, yields massive lesions in the lung, that is, shows the existence of progressive massive fibrosis; or (3) when established by diagnosis by means other than those specified in subparagraphs (1) or (2) of this paragraph, would be a condition which could reasonably be expected to yield the results described in subparagraph (1) or (2) of this paragraph had diagnosis been made as therein prescribed. Provided, however, that any diagnosis made under this clause shall be in accordance with generally accepted medical procedures for diagnosing pneumoconiosis.

(b) (1) He is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months; or (2) where the requirements of paragraph (a) of this section are met, the finding that a miner is under a total disability is established by irrebuttable presumption.

2. Evaluating total disability. (a) Total disability may not be found for purposes of this part unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in 1. (b) is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. Medical considerations alone can, except where other evidence rebuts a finding of "disability," e.g., the individual is actually engaging in substantial gainful activity, justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in 1. (b), and is listed in the appendix to this subpart.

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. Such an individual, however, shall be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful activity. In any such case it must be established that the individual has a respiratory impairment because of pneumoconiosis, demonstrated on the basis of an MVV and FEV_1 which are equal to or less than the values specified in the following table or by a medically equivalent test.

Height (Inches)	MVV(MBC) equal to or less than	and FEV_1 equal to or less than
	L./Min.	L.
57 or less	52	1.4
58	53	1.4
59	54	1.4
60	55	1.5
61	56	1.5
62	57	1.5
63	58	1.5
64	59	1.6
65	60	1.6
66	61	1.6
67	62	1.7
68	63	1.7
69	64	1.8
70	65	1.8
71	66	1.8
72	67	1.9
73 or more	68	1.9

3. Evidence of pneumoconiosis. (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

(1) A chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or

union internationale contra cancer/Cincinnati (1968) classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be reclassified as category O or category 1 and only the latter accepted as evidence of pneumoconiosis); or

(2) An autopsy showing the existence of pneumoconiosis; or

(3) A biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. Such biopsy would not be expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however, (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest, taken at a distance of six (6) feet between the X-ray tube and the X-ray film on a 14 by 17 inch X-ray film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized portions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, the evidence should include a complete copy of the autopsy report.

4. Determining medical equivalence. (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this subpart only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under 2. (a) and 6. (a) as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this subpart, shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the board, relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in 2. (b) shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the board, relative to the question of the medical equivalence of such test.

5. Evidence of origin of pneumoconiosis. (a) If a miner was employed for ten (10) years or more in coal mines and is suffering or has suffered from pneumoconiosis, it will be presumed, in the absence of evidence to the contrary, that the pneumoconiosis arose out of such employment.

(b) In any other case, a miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines.

6. Death due to pneumoconiosis. (a) A miner's death will be determined to have been due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which meets the requirements of 1. (a); or

(b) If a deceased miner was employed for ten (10) years or more in coal mines and died from a respirable disease, it will be presumed, in the absence of evidence to the contrary, that his death was due to pneumoconiosis. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease, or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was, in fact, due to pneumoconiosis (e.g., cancer of the lung, disease due to trauma, pulmonary emboli); or

(c) Under circumstances other than those in paragraphs (a) or (b) of this section, the claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines.

History: En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971.

Amendments

The 1971 amendment inserted "or pneumoconiosis" after "other than silicosis" in the first paragraph of subdivision A 1; and added the present subsection B.

92-1315.1. Medical definition of totally disabling pneumoconiosis. A miner with pneumoconiosis, as evidenced in 3. of this part, plus one of the following sets of medical specifications, may be found to be under a total disability, in the absence of evidence rebutting such finding:

(1) Airway obstruction demonstrated on spirogram by MVV and FEV_1 equal to or less than the values specified in the following table:

Height (Inches)	MVV(MBC) equal to or less than	and FEV_1 equal to or less than
	L./Min.	L.
57 or less	32	1.0
58	33	1.0
59	34	1.0
60	35	1.1
61	36	1.1
62	37	1.1
63	38	1.1
64	39	1.2
65	40	1.2
66	41	1.2
67	42	1.3
68	43	1.3

Height (Inches)	MVV(MBC) equal to or less than	FEV_1 equal to and or less than
	L./Min.	L.
69	44	1.3
70	45	1.4
71	46	1.4
72	47	1.4
73 or more	48	1.4

or

(2) Total vital capacity equal to or less than the values specified in the following table:

Height (Inches)	V.C. equal to or less than
	(L.)
57 or less	1.2
58	1.3
59	1.3
60	1.4
61	1.4
62	1.5
63	1.5
64	1.6
65	1.6
66	1.7
67	1.7
68	1.8
69	1.8
70	1.9
71	1.9
72	2.0
73 or more	2.0

or

(3) Diffusing capacity of the lungs for carbon monoxide less than 6 ml./mm. Hg./min. (steady-state methods) or less than 9 ml./mm. Hg./min. (single-breath methods) or less than thirty per cent (30%) of predicted normal (all methods—actual value and predicted normal for the method used should be reported); or

(4) Arterial oxygen saturation at rest and simultaneously determined arterial p CO_2 equal to, or less than, the values specified in the following table:

Arterial p CO_2	and	Arterial O_2 saturation equal to or less than (%)
30 mm.Hg. or below		93
31 mm.Hg.		93
32 mm.Hg.		92
33 mm.Hg.		92
34 mm.Hg.		91
35 mm.Hg.		91
36 mm.Hg.		90
37 mm.Hg.		89
38 mm.Hg.		88
39 mm.Hg.		88
40 mm.Hg. or above		87

(5) Cor pulmonale with right-sided congestive failure as evidenced by peripheral edema and liver enlargement, with:

(A) Right ventricular enlargement or outflow tract prominence on X-ray or fluoroscopy; or

(B) ECG showing QRS duration less than 0.12 second and R of 5 mm. or more in V_1 and R/S of 1.0 or more in V_1 and transition zone (decreasing R/S) left of V_1; or

(6) Congestive heart failure with signs of vascular congestion such as hepatomegaly or peripheral or pulmonary edema, with:

(A) Cardio-thoracic ratio of fifty-five per cent (55%) or greater, or equivalent enlargement of the transverse diameter of the heart, as shown on teleroentgenogram (6-foot film); or

(B) Extension of the cardiac shadow (left ventricle) to the vertebral column on lateral chest roentgenogram and total of S in V_1 or V_2 and R in V_5 or V_6 of 35 mm. or more on ECG.

History: En. Sec. 5, Ch. 190, L. 1971.

Title of Act

An act to provide revisions to "The Occupational Disease Act of Montana" in compliance with the mandate of the Congress of the United States as required by the provisions of Public Law 91-173 of the Ninety-first Congress; and providing for the payment of benefits for total disability or death to a coal miner due to defined pneumoconiosis substantially to, or greater than, the amount of benefits prescribed by said public law and to prescribe standards and definitions for determining death or total disability due to pneumoconiosis, which are substantially equivalent to those established by said public law and regulations by the secretary of health, education and welfare; and providing for the submission of any claim for benefits within three years of discovery of total disability or death from said disease; and providing for the liability of prior and successor operators for all benefits for miners at such mine on or after December 30, 1969; amending section 92-1303, R. C. M., 1947, relating to definitions of disablement and pneumoconiosis; amending section 92-1310, R. C. M., 1947, relating to liability of last employer; amending section 92-1312, R. C. M., 1947, relating to time in which a claim may be presented; amending section 92-1315, R. C. M., 1947, relating to procedure for medical examination; amending section 92-1321, R. C. M., 1947, relating to compensation benefits payable under said act; and providing an appendix setting forth appropriate charts for determination of disability and providing standards for interpretation thereof; and providing an effective date.

92-1321. Compensation benefits payable under this act. The compensation to which an employee temporarily totally disabled or perma-

nently totally disabled by an occupational disease, or his beneficiaries and dependents in the case of death caused by an occupational disease, shall be entitled to under this act shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time, as is provided in cases of temporary total disability, permanent total disability and in cases of injuries causing death under the Workmen's Compensation Act of the state of Montana. Benefit payments for total disability or death due to pneumoconiosis shall, for the purpose of this act, be made as follows:

a. In the case of total disability of a miner due to pneumoconiosis the disabled miner shall be paid benefits during the disability at the rate of one hundred fifty-five dollars ($155) per month.

b. In the case of death of a miner due to pneumoconiosis or of a miner receiving benefits under this part, benefits shall be paid to his widow (if any) at the rate the deceased miner would receive such benefits if he were totally disabled.

c. In the case of an individual entitled to benefit payments under clause a. or b. who has one or more dependents, the benefit payments shall be increased at the rate of fifty per centum (50%) of such benefit payments, if such individual has one (1) dependent, seventy-five per centum (75%) if such individual has two (2) dependents, and one hundred per centum (100%) if such individual has three (3) or more dependents.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971.

Amendments

The 1971 amendment added the last sentence, including the lettered subdivisions relating to pneumoconiosis, at the end of the section.

Repealing Clause

Section 7 of Ch. 190, Laws 1971 repealed all acts and parts of acts in conflict therewith.

Separability Clause

Section 8 of Ch. 190, Laws 1971 read "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Effective Date

Section 9 of Ch. 190, Laws 1971 provided the act should be in effect from and after its passage and approval. Approved March 3, 1971.

92-1334. Compensation plans.

Cross-References

Investment functions of board transferred, sec. 82A-205(3).

CHAPTER 14—REHABILITATION OF INJURED WORKMEN

Section 92-1403. Expenses payable to workman receiving training.

92-1403. Expenses payable to workman receiving training. The eligibility of any injured workman to receive other benefits under the Workmen's Compensation Act of the state of Montana shall in no way be affected by his entrance upon a course of vocational rehabilitation

as herein provided, but he may be paid, in addition thereto, upon the certification of the vocational rehabilitation division from funds herein provided, (1) his actual and necessary travel expenses from his place of residence to the place of training, and return, (2) his living expenses while in training in an amount not in excess of fifty dollars ($50) per week, his expenses for tuition, books and necessary equipment in training.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971.

Amendments

The 1971 amendment, substituted "may" for "shall" before "be paid"; deleted "away from home" after "while in training"; and increased the weekly living expense allowance from $30 to $50.

REVISED CODES OF MONTANA

VOLUME 7

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 7 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 7 THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



Copyright © 1965, 1967, 1969, 1971 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1973 by
The Allen Smith Company
Indianapolis, Indiana

NEW LAWS IN VOLUME 7

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1965

Attachment released if no proceedings taken in action, 93-4331.1.
Exemptions from execution, waiver in unsecured note unenforceable, 93-5813.1.
Judicial sales, validation, 93-5846.
Montana Rules of Appellate Civil Procedure, Rules 1 to 43.
Recording of judgment as notice despite defect in proceedings, 93-5710.1.

ENACTED IN 1967

Actions relating to unincorporated associations, M. R. Civ. P., Rule 23.2.
Derivative actions by shareholder, M. R. Civ. P., Rule 23.1.
Directed verdict, motion for, M. R. Civ. P., Rules 50(c) and (d).
Foreign law, determination of, M. R. Civ. P., Rule 44.1.
Interpreter, court appointment of, M. R. Civ. P., Rule 43(f).
Judges' retirement system, 93-1107 to 93-1132.
Justices' courts, pleadings, 93-6802.1, 93-6802.2.
Recording of judgment before 1967 as notice, 93-5710.2.
Validation of judicial sales before 1967, 93-5846.

ENACTED IN 1968

Removal to federal district court, transmittal of file, Rule 77(e).

ENACTED IN 1969

Drawing additional jurors, 93-1512.
Uniform Reciprocal Enforcement of Support Act, revised, 93-2601-41 to 93-2601-82.
Validation of defective judgments or decrees affecting realty, 93-5710.3.
Validation of judicial sales before 1969, 93-5846.

ENACTED IN 1971

Attorney fees, contractual right reciprocal, 93-8601.1.
Construction contractors, limitation of actions against, 93-2619 to 93-2623.
Medical malpractice actions, limitation, 93-2624.
Relocation assistance on land acquisitions in federally assisted programs, 93-9927 to 93-9944.
Validation of defective judgments or decrees affecting realty, 93-5710.4.
Validation of judicial sales before 1971, 93-5846.

ENACTED IN 1973

Coal, public policy on surface or open pit mining, 93-9902.1.
Eminent domain, offer by condemnor before trial, 93-9921.1.
Judicial nomination commission, 93-705 to 93-717.
Judicial standards commission, 93-718 to 93-728.
Justices of the peace, supplies, salaries and office hours, 93-412 to 93-414.
Validation of defective judgments or decrees affecting realty, 93-5710.5.
Validation of judicial sales before 1973, 93-5846.
Voluntary partial payment of claims, effect, 93-2201-7 to 93-2201-10.

AMENDMENTS IN VOLUME 7

Amended pleadings, relation back, M. R. Civ. P., Rule 15(c).
Attachment, undertaking, 93-4304.
Attorneys, admission to practice, 93-2001.
Change of name, 93-100-2.

Change of venue, 93-2908, M. R. Civ. P., Rule 12(b).
Class action, M. R. Civ. P., Rule 23 generally.
Counterclaim and cross-claim, M. R. Civ. P., Rule 13(h).
Court reporters, 93-1906.
Default judgment, M. R. Civ. P., Rule 55(b).
Defenses and objections,
Affirmative defenses, M. R. Civ. P., Rule 86(a).
Consolidation, M. R. Civ. P., Rule 12(g).
Denials, M. R. Civ. P., Rule 8(c).
Pleading, M. R. Civ. P., Rule 12(b).
Preliminary hearings, M. R. Civ. P., Rule 12(d).
Waiver, M. R. Civ. P., Rule 12(h).
Depositions, M. R. Civ. P., Rules 28(b) and (e).
Depositions pending action, objections to admissibility, M. R. Civ. P., Rule 26(e).
Directed verdict, motion for, M. R. Civ. P., Rules 50(a) and (b).
Dismissal of action,
For failure to serve summons, M. R Civ. P., Rule 41(e).
Involuntary dismissal, effect of, M. R. Civ. P., Rule 41(b).
Disqualification of judge, 93-901.
Judge pro tempore, 93-2906.
District courts,
Judicial districts and number of judges, 93-301, 93-302.
Jurisdiction and powers, 93-318.
Qualifications of judges, 93-702.
Salaries and expenses of judges, 93-303, 93-313.
Eminent domain, proceedings under, 93-9902, 93-9905, 93-9908, 93-9912, 93-9913.
Exceptions unnecessary to preserve record, M. R. Civ. P., Rule 46.
Findings by court, M. R. Civ. P., Rule 52(a) and (b).
Forcible entry and detainer actions, jurisdiction, 93-9705.
Impeachment jurisdiction, 93-104.
Injunction against price-fixing or regulation of production, 93-4215, 93-4216.
Interrogatories to parties, M. R. Civ. P., Rule 33.
Intervention, M. R. Civ. P., Rules 24(a) and (c).
Joinder of claims, M. R. Civ. P., Rule 18(a).
Joinder of persons needed for just adjudication, M. R. Civ. P., Rules 19(a), (b), (c) and (d).
Judges' retirement system,
Administrative expenses, 93-1110.
Final salary, 93-1107.
Juries,
Challenge of jurors, 93-5010.
Exemptions from jury duty, 93-1304.
Grand juries, 93-1801, 93-1802.
Number of jurors, 93-1205.
Qualifications of jurors, 93-1301.
Selection of jurors, 93-1404, 93-1503.
Summons of jurors, 93-1602.
Jurisdiction of persons in courts, M. R. Civ. P., Rules 4 A, 4 B.
Justices of the peace,
Arrest in civil action before justice, 93-6903.
Depositions for use in justice's court, 93-7712.
Election to office, 93-401.
Execution on judgment, 93-7402.
Judgment in civil action before justice, 93-7302, 93-7311.
Number of justices, 93-401.
Oath of office, 93-401.
Place of holding court, 93-402.
Qualifications for office, 93-401, 93-704.
Residence requirement, 93-704.
Special constables, appointment, 93-7709.
Substituting for another justice, 93-403, 93-7704.
Summons in civil action, contents and service, 93-6706, 93-6711.
Term of office, 93-405.
Training of justices, 93-401.
Vacancy in office, proceedings on, 93-7605, 93-7607.
Venue of civil action in justice's court, 93-6601, 93-6602.

Limitation of actions,
Bond issues, actions to prevent, 93-2612.
Medical malpractice actions, 93-2624.
New trials, M. R. Civ., P., Rules 59(d) and (e).
Offer of judgment, M. R. Civ. P., Rule 68.
Official record, proof of, M. R. Civ. P., Rules 44(a), (b) and (c).
Oral depositions, M. R. Civ. P., Rule 30(f).
Permissive joinder, M. R. Civ. P., Rule 20(a).
Physical and mental examinations, M. R. Civ. P., Rule 35(b)(2).
Pleadings, service of, M. R. Civ. P., Rule 5(a).
Poor person may sue or defend without costs, 93-8625.
Privileged communications, 93-701-4.
Real party in interest, M. R. Civ. P., Rule 17(a).
Receivers, appointment, 93-4401.
Records as evidence, reproductions of orginals, 93-801-5.
Relief from judgment or order, M. R. Civ. P., Rule 60(b).
Removal to federal court, transmittal of file, M. R. Civ. P., Rule 77(e).
Rules of Appellate Civil Procedure,
Briefs, M. R. App. Civ. P., Rule 23(f).
Costs on appeal, M. R. App. Civ. P., Rule 33(a).
Notice of appeal, time for filing, M. R. App. Civ. P., Rule 5.
Original proceedings in supreme court, M. R. App. Civ. P., Rule 17.
Petitions for rehearing, M. R. App. Civ. P., Rule 34.
Record on appeal, M. R. App. Civ. P., Rule 9(f).
Scope, M. R. App. Civ. P., Rule 1(b).
Rules of Civil Procedure,
Amendment procedure, M. R. Civ. P., Rule 86(a).
Statutes superseded, M. R. Civ. P., Rule 86(b), Tables B and C.
Service of process, M. R. Civ. P., Rule 4 D.
Summary judgment proceedings, M. R. Civ. P., Rule 56(c).
Summons, form and issuance, M. R. Civ. P., Rule 4 C.
Supreme court justices,
Election and term of office, 93-201.
Qualifications for office, 93-702.

MONTANA REVISED CODES

TITLE 93—CIVIL PROCEDURE

Chapter 1. Courts of justice, of record and of impeachment, 93-104.
2. Supreme court, 93-201.
3. District courts, 93-301 to 93-303, 93-313, 93-318.
4. Justices' and police courts, 93-401 to 93-403, 93-405, 93-412 to 93-414.
7. Qualifications, appointment and discipline of judicial officers, 93-702, 93-704 to 93-728.
9. Disqualification of judicial officers, 93-901.
11. Miscellaneous provisions respecting courts and judicial officers, 93-1107 to 93-1132.
12. Juries—different kinds defined, 93-1205.
13. Jurors—qualifications and exemptions, 93-1301, 93-1304.
14. Jurors—selection and return, 93-1404.
15. Jurors—drawing and summoning for courts of record, 93-1503, 93-1512.
16. Jurors—summoning for justices' and inferior courts and courts of inquest, 93-1602.
18. Juries—how impaneled—alternates, 93-1801, 93-1802.
19. Court reporters, 93-1906.
20. Attorneys—qualifications—admission—license and disbarment, 93-2001.
26. Limitation of other actions, 93-2612, 93-2619 to 93-2624.
29. Place of trial of civil actions, 93-2906, 93-2908.
42. Injunction, 93-4215, 93-4216.
43. Attachment, 93-4304, 93-4331.1.
44. Receivers, 93-4401.
50. Trial by jury—formation of jury—challenges, 93-5010.
57. Judgment—manner of giving and entry—judgment roll and docket—lien of, 93-5708, 93-5710.1 to 93-5710.5.
58. The execution, 93-5813.1, 93-5846.
66. Justices' courts—place of trial of actions, 93-6601, 93-6602.
67. Justices' courts—manner of commencing actions in, 93-6706, 93-6711.
68. Justices' courts—pleadings in, 93-6802.1, 93-6802.2.
69. Justices' courts—provisional remedies—arrest in civil actions—attachment—claim and delivery, 93-6903.
73. Justices' courts—judgment in, 93-7302, 93-7311.
74. Justices' courts—execution from, 93-7402.
76. Justices' courts—dockets, 93-7605.
77. Justices' courts—general provisions, 93-7704, 93-7709, 93-7712.
80. Supreme court—appeals to, 93-8001, 93-8002, 93-8013.
86. Costs and disbursements—cost bill—suit in forma pauperis, 93-8601.1, 93-8625.
97. Forcible entry and unlawful detainer—actions for, 93-9705.
99. Eminent domain, 93-9902, 93-9902.1, 93-9905, 93-9908, 93-9912, 93-9913, 93-9921.1, 93-9927 to 93-9944.
100. Names—change of names of persons—of watercourses, 93-100-2.
701. Evidence—witnesses, 93-701-4.
801. Evidence—Uniform Business Records as Evidence Act—Uniform Photographic Copies of Business and Public Records as Evidence Act, 93-801-5.
2201. Evidence—rules in particular cases, 93-2201-7 to 93-2201-10.
2601. Revised Uniform Reciprocal Enforcement of Support Act (1968), 93-2601-41 to 93-2601-82.
2701. Montana Rules of Civil Procedure, Rules 4, 5(a), 6(b), 8(b), (c), 12 (b), (d), (g), (h), 13(h), 15(c), 17(a), 18(a), 19(a) to (d), 20(a), 23(a) to (f), 23.1, 23.2, 24(a), (c), 26(e), 28(b), (e), 30(f), 33, 35(b) (2), 41(b), (e), 43(f), 44(a)(1), (2) to (c), 44.1, 46, 47(b), 50(a) to (d), 52(a), (b), 55(b)(2), 56(c), 59(a) to (f), 60(b), (c), 68, 72, 77(e), 86(a), (b), Tables B, C.
3001. Montana Rules of Appellate Civil Procedure, Rules 1 to 43, Appendix of Forms, Tables A to C.

CHAPTER 1—COURTS OF JUSTICE, OF RECORD AND OF IMPEACHMENT

Section 93-104. Jurisdiction.

93-104. (8787) **Jurisdiction.** The court has jurisdiction to try impeachments, when presented by the house of representatives, of the governor, executive officers, heads of state departments and judicial officers for felonies and misdemeanors or malfeasance in office.

History: En. Sec. 7, C. Civ. Proc. 1895; re-en. Sec. 6241, Rev. C. 1907; re-en. Sec. 8787, R. C. M. 1921; amd. Sec. 1, Ch. 5, L. 1973. Cal. C. Civ. Proc. Sec. 37.

Amendments

The 1973 amendment substituted "executive officers, heads of state departments" for a reference to other state officers; deleted "except justices of the peace" following "judicial officers"; and substituted "felonies" for "high crimes."

CHAPTER 2—SUPREME COURT

Section 93-201. Justices—number increased to five—election and term of office.

93-201. (8790) **Justices—number increased to five—election and term of office.** The supreme court consists of a chief justice and four associate justices, who are elected by the qualified electors of the state at large at the general state elections next preceding the expiration of the terms of office of their predecessors, respectively, and hold their offices for the term of eight (8) years from and after the first Monday of January next succeeding their election.

History: En. Sec. 12, C. Civ. Proc. 1895; re-en. Sec. 6244, Rev. C. 1907; amd. Sec. 1, Ch. 31, Ex. L. 1919; re-en. Sec. 8790, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1973. Cal. C. Civ. Proc. Sec. 40.

Amendments

The 1973 amendment increased the term of office from six to eight years; and made minor changes in phraseology.

Repealing Clause

Section 2 of Ch. 13, Laws 1973 read "Sections 93-202, 93-203, 93-204, 93-205, 93-206, R. C. M. 1947, are repealed."

93-202 to 93-206. (8791 to 8795) Repealed.

Repeal

Sections 93-202 to 93-206 (Secs. 2 to 6, Ch. 31, Ex. L. 1931), relating to appointments of additional justices to increase the supreme court from three to five justices, were repealed by Sec. 2, Ch. 13, Laws 1973.

93-209. (8798) Repealed.

Repeal

Section 93-209 (Sec. 14, C. Civ. Proc. 1895), relating to filling of vacancies in office of supreme court justice, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

93-214. (8803) Original jurisdiction.

Declaratory Judgment

Determination of legal rights concerning election of delegates and implementation of state constitutional convention was properly decided in declaratory judgment action by supreme court under its original jurisdiction in aid of its appellate jurisdiction. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

93-216. (8805) **Powers and duties of supreme court on appeals.**

Equity Case

In an equity case it is proper for the appellate court to pry into the factual issues of the case and the decision must hinge on factual observations unless the case is returned to the lower court for further proceedings. Jenson v. Olson, 144 M 224, 395 P 2d 465, 468.

The supreme court in reviewing an equity case will review the law therein and also will review the evidence to that extent necessary to ascertain whether the findings of fact by the trial court are substantially supported and sufficient to support the conclusions of law derived therefrom. Bender v. Bender, 144 M 470, 397 P 2d 957.

Supreme court in equity case not only has function of reviewing law involved but also reviews evidence to extent of determining whether findings of fact by trial court are supported by substantial evidence. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

Nuisance Cases

Supreme court will not hesitate to set aside lower court finding that nuisance exists where there is no substantial evidence on which to base finding. Kasala v. Kalispell Pee Wee Baseball League, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

Probate Proceedings

Supreme court reversed where evidence did not support district court finding that will was drafted at direction of decedent and that he was aware of its contents when he signed. Erickson v. Erickson, 152 M 179, 448 P 2d 144.

Remand to District Court

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute case returned by supreme court to lower court for new trial where trial court failed to set trial for next jury term as per order of supreme court under statute providing that supreme court may direct new trial. Jangula v. United States Rubber Co., 149 M 241, 425 P 2d 319.

Scope of Review

Function of supreme court on review is to determine whether there is substantial evidence to support findings of fact and conclusions of law. Peery v. Higgins, 152 M 140, 447 P 2d 481.

Review of evidence is limited to determining whether there is substantial evidence to support trial court's findings of fact and whether such findings are sufficient to support conclusions of law. Keller v. Martin, 153 M 9, 452 P 2d 422.

Specific Performance

Where district court decree ordering conveyance of property contained directions as to distribution of the sale price that could be construed as at variance from its findings as to ownership, supreme court could modify decree so as to distribute money in accordance with the findings. Morris v. Monk, 158 M 163, 489 P 2d 1029.

References

Kyser v. Hiebert, 142 M 466, 385 P 2d 90; State ex rel. Keast v. Krieg, 147 M 164, 410 P 2d 710.

93-220. Repealed.

Repeal

Section 93-220 (Sec. 2, Ch. 139, L. 1957), relating to filling vacancy on supreme court, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

CHAPTER 3—DISTRICT COURTS

Section 93-301. Judicial districts defined.
93-302. Number of judges.
93-303. Salaries of district judges.
93-313. Expenses of judges holding court in other counties.
93-318. Original jurisdiction.

93-301. (8812) **Judicial districts defined.** In this state there are eighteen judicial districts, distributed as follows:

First district: Lewis and Clark and Broadwater counties.

Second district: Silver Bow county.

Third district: Deer Lodge, Granite, and Powell counties.

Fourth district: Missoula, Mineral, Lake, Ravalli, and Sanders counties.

Fifth district: Beaverhead, Jefferson, and Madison counties.

Sixth district: Park and Sweet Grass counties.

Seventh district: Dawson, McCone, Richland, and Wibaux counties.

Eighth district: Cascade and Chouteau counties.

Ninth district: Teton, Pondera, Toole, and Glacier counties.

Tenth district: Fergus, Judith Basin, and Petroleum counties.

Eleventh district: Flathead and Lincoln counties.

Twelfth district: Liberty, Hill, and Blaine counties.

Thirteenth district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure counties.

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

Eighteenth district: Gallatin county.

History: En. Sec. 6256, Rev. C. 1907; re-en. Sec. 8812, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1929; amd. Sec. 1, Ch. 23, L. 1973.

Amendments

The 1973 amendment increased the number of districts from seventeen to eighteen and transferred Gallatin county from the sixth to the eighteenth district.

Repealing Clause

Section 2 of Ch. 23, Laws 1973 read "Sections 93-301.1, 93-301.2, 93-301.3, and 93-301.4, R. C. M. 1947, are repealed."

93-301.1 to 93-301.4. Repealed.

Repeal

Sections 93-301.1 to 93-301.4 (Secs. 1 to 4, Ch. 80, L. 1947), creating the eighteenth judicial district, were repealed by Sec. 2, Ch. 23, Laws 1973. For present law, see sec. 93-301.

93-302. (8813) **Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district, and whose term of office must be six (6) years, to wit: In the first, second, eleventh and sixteenth, two judges each, in the thirteenth, eighth and fourth, three judges, and, in all other districts, one judge each.

History: En. Sec. 1, p. 156, L. 1901; re-en. Sec. 6264, Rev. C. 1907; re-en. Sec. 8813, R. C. M. 1921; amd. Sec. 2, Ch. 91, L. 1929; amd. Sec. 1, Ch. 18, L. 1955; amd. Sec. 1, Ch. 91, L. 1957; amd. Sec. 1, Ch. 161, L. 1959; amd. Sec. 1, Ch. 229, L. 1963; amd. Sec. 1, Ch. 14, L. 1973.

Amendments

The 1973 amendment increased the term of office from four to six years; and deleted a second paragraph relating to the appointment of a judge of the fourth district to serve until the 1964 election.

93-303. (8814) **Salaries of district judges.** The annual salary of each district judge shall be twenty thousand five hundred dollars ($20,500), beginning July 1, 1971.

History: En. Sec. 1, Ch. 176, L. 1919; re-en. Sec. 8814, R. C. M. 1921; amd. Sec. 1, Ch. 114, L. 1947; amd. Sec. 1, Ch. 84, L. 1951; amd. Sec. 1, Ch. 247, L. 1955; amd. Sec. 1, Ch. 198, L. 1959; amd. Sec. 1, Ch. 187, L. 1961; amd. Sec. 2, Ch. 212, L. 1963; amd. Sec. 2, Ch. 308, L. 1967; amd. Sec. 1, Ch. 322, L. 1969; amd. Sec. 1, Ch. 4, 2nd Ex. L. 1971.

Amendments

The 1967 amendment increased from $14,000 to $15,000 the annual salary for district judges.

The 1969 amendment increased the annual salary from $15,000 to $19,000.

The 1971 amendment increased the annual salary from $19,000 to $20,500, effective July 1, 1971.

Repealing Clause

Section 3 of Ch. 308, Laws 1967 repealed all acts and parts of acts in conflict therewith.

93-309. (8820) **Repealed.**

Repeal

Section 93-309 (Sec. 35, C. Civ. Proc. 1895), relating to vacancies on the district court bench, was repealed by Sec. 14, Ch. 470, Laws 1973. For new law, see secs. 93-705 to 93-717.

93-313. (8824) **Expenses of judges holding court in other counties.** Each district judge of a judicial district in this state, composed of more than one county, when, for the purpose of holding court and disposing of judicial business, he goes to a county of his judicial district, other than the county in which he resides, and therein holds court or transacts judicial business, shall be paid all of his actual and necessary expenses of transportation and living, incurred on account thereof, and all expenditures made therefor, from the time he leaves his place of residence until he returns thereto. Actual and necessary expenses of transportation incurred when a judge uses his own automobile shall be calculated at the rate of twelve cents ($.12) per mile.

History: En. Sec. 1, Ch. 91, L. 1911; re-en. Sec 8824, R. C. M. 1921; amd. Sec. 2, Ch. 455, L. 1973.

Amendments

The 1973 amendment added the second sentence.

93-318. (8829) **Original jurisdiction.** (1) The district court has original jurisdiction in:

(a) all criminal cases amounting to felony,

(b) all civil and probate matters,

(c) all cases at law and in equity,

(d) all cases of misdemeanor not otherwise provided for, and

(e) all such special actions and proceedings as are not otherwise provided for.

(2) The district court has the power of naturalization, and to issue papers therefor, in all cases where they are authorized to do so by the laws of the United States.

(3) The district court and its judges have power to issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, injunction, and other original remedial writs, and all writs of habeas corpus, on petition by, or on behalf of any person held in actual custody in their respective districts. Injunctions, writs of prohibition, and habeas corpus may be issued and served on legal holidays and nonjudicial days.

History: En. Sec. 41, C. Civ. Proc. 1895; re-en. Sec. 6275, Rev. C. 1907; re-en. Sec. 8829, R. C. M. 1921; amd. Sec. 1, Ch. 11, L. 1973. Cal. C. Civ. Proc. Sec. 76.

Amendments

The 1973 amendment divided the section into numbered subdivisions; rewrote subdivision (1) to conform to the new constitution; and made minor changes in style.

93-320. (8831) **Process.**

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640.

CHAPTER 4—JUSTICES' AND POLICE COURTS

Section 93-401. Justices' courts and justices of the peace.
93-402. Courts—where held—when open for business.
93-403. Holding court for another justice within county.
93-405. Terms of office.
93-412. Facilities furnished to justices by county.
93-413. Salaries of justices of the peace.
93-414. Office hours of justices.

93-401. (8833) **Justices' courts and justices of the peace.** (1) There must be at least one (1) justice court in each county of the state, for which one (1) justice of the peace must be elected by the qualified electors of the county at the general state election next preceding the expiration of the term of office of his predecessor.

(2) A justice of the peace shall be nominated and elected on the nonpartisan judicial ballot in the same manner as are judges of the district court. Each judicial office shall be a separate and independent office for election purposes and each office shall be numbered by the county commissioners and each candidate for justice of the peace shall specify the number of the office for which he seeks to be elected. A candidate may not file for more than one (1) office. Section 23-4511 prohibiting political party endorsement for judicial officers shall also apply to justices of the peace.

(3) Each justice of the peace, elected or appointed, after he has received his certificate of election or appointment, shall, before entering upon the duties of his office take the constitutional oath of office, which must be filed with the county clerk.

(4) Before the county clerk may file the oath the elected or appointed justice must satisfy the clerk that he is either:

(a) an attorney at law authorized to practice law in the state of Montana, or

(b) a person who has held the office of justice of the peace within the preceding five (5) years, or

(c) a person who has completed the orientation course of study held under the direction of the Montana Magistrates Association of the state of Montana; or if a person is appointed after the course is offered he must agree to take the course at the next offering and failure to do so will disqualify him.

(5) The Montana Magistrates Association shall present a course of study within four (4) weeks following each general election. Mileage and per diem shall be paid the elected or appointed justice of the peace for attending the course and shall be a proper charge against the county wherein the justice of the peace will hold court.

History: En. Sec. 60, C. Civ. Proc. 1895; re-en. Sec. 6279, Rev. C. 1907; re-en. Sec. 8833, R. C. M. 1921; amd. Sec. 4, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 85.

Amendments

The 1973 amendment designated the language in the former section as subsection (1); reduced the number of justice courts from two per township to one per county; reduced the number of justices to be elected from two per township to one per county; and added subsections (2) through (5).

93-402. (8834) **Courts—where held—when open for business.** A justice's court may be held at any place selected by the justice holding the same, in the county for which he is elected or appointed; and such court is always open for the transaction of business, except on legal holidays and nonjudicial days.

History: En. Sec. 61, C. Civ. Proc. 1895; re-en. Sec. 6280, Rev. C. 1907; re-en. Sec. 8834, R. C. M. 1921; amd. Sec. 1, Ch. 92, L. 1933; amd. Sec. 6, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 104.

Amendments

The 1973 amendment substituted "county" for "township"; and deleted "provided, that said justice may hold court beyond the limits of his township as provided in section 93-403" from the end of the section.

93-403. (8835) **Holding court for another justice within county.** A justice of the peace of any county may hold the court of any other justice of the peace of the same county at his request, and while so acting is vested with the power of the justice for whom he so holds court, in which case the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice for whom he so holds the court.

History: En. Sec. 62, C. Civ. Proc. 1895; re-en. Sec. 6281, Rev. C. 1907; re-en. Sec. 8835, R. C. M. 1921; amd. Sec. 2, Ch. 92, L. 1933; amd. Sec. 7, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 105.

Amendments

The 1973 amendment substituted "county" for "township"; and deleted from the end of the section a proviso and two sentences which allowed the justice to hold court beyond the limits of his township.

93-405. (8837) **Terms of office.** The term of office of justices of peace is four (4) years from the first Monday in January next succeeding their election.

History: En. Sec. 64, C. Civ. Proc. 1895; re-en. Sec. 6283, Rev. C. 1907; re-en. Sec. 8837, R. C. M. 1921; amd. Sec. 8, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 110.

Amendments

The 1973 amendment increased the term of office from two to four years.

93-407. (8839) **Repealed.**

Repeal

This section (Sec. 1, p. 99, L. 1901; Sec. 1, Ch. 35, L. 1921), relating to the oath and bond of the justice of the peace, was repealed by Sec. 10, Ch. 68, Laws 1967. For new provisions relating to bonds of county officers and employees, see sec. 6-203 et seq.

93-410. (8842) **Criminal jurisdiction.**

Driving While under Influence of Intoxicating Liquor

Since the offense of driving a vehicle on a highway while under the influence of intoxicating liquor in violation of section 32-2142 is a misdemeanor, it falls within the jurisdiction of a justice of the peace under this section. Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

93-412. Facilities furnished to justices by county. (1) The board of county commissioners of the county in which the justice of the peace has been elected or appointed shall provide for the justices of the peace:

(a) the office, courtroom and clerical assistance necessary to enable him to perform his duties in dignified surroundings;

(b) the books, records, forms, papers, stationery, postage, office equipment and supplies necessary in the proper keeping of the records and files of the judicial office and the transaction of the business;

(c) the latest edition of the Revised Codes of Montana and all official supplements thereto.

(2) All actual and necessary expenses incurred by the justice of the peace in the performance of his official duties is a legal charge against the county.

History: En. Eec. 3, Ch. 491, L. 1973.

Title of Act

An act providing for the minimum number of justices of the peace, their compensation, qualifications, terms of office, training and designation as county officers; providing for the collection of fees by justices and improvement of their facilities; abolishing fees in criminal actions; and deleting references to townships; all to comply with article VII, sections 5 and 7 of the 1972 Montana constitution; amending sections 11-727, 16-2403, 16-2404, 16-2406, 25-307, 93-401 through 93-403, 93-405, 93-704, 93-1602, 93-6601, 93-6602, 93-6706, 93-6903, 93-7302, 93-7311, 93-7402, 93-7605, 93-7607, 93-7704, 93-7709, 93-9705, R. C. M. 1947; and repealing sections 25-303, 25-305 and 25-306, R. C. M. 1947.

93-413. Salaries of justices of the peace. The board of county commissioners shall set salaries for justices of the peace by resolution, provided that:

(1) if the salary of the justice of the peace was determined on a fee basis for the years 1971 and 1972, he shall receive a monthly salary of not less than one-eighteenth of the total fees, civil and criminal, collected by the justice or his predecessor in office during the two (2) years, 1971 and 1972;

(2) if the salary of the justice of the peace was determined on a nonfee basis for the years 1971 and 1972, the justice shall be paid not less than the highest salary earned by the justice or his predecessor for the years 1971 and 1972.

History: En. Sec. 1, Ch. 491, L. 1973.

93-414. Office hours of justices. In the resolution providing for the salary the county commissioners shall designate the office hours for each justice. Office hours shall be commensurate with the salary provided.

History: En. Sec. 2, Ch. 491, L. 1973.

CHAPTER 5—GENERAL PROVISIONS RESPECTING THE POWERS, PROCEEDINGS AND HOLDING OF COURTS OF JUSTICE

93-502. (8845) Courts of record may make rules.

Force of Rules

Trial court rule requiring filing of briefs in support of preliminary motions is proper exercise of authority under this section and may be enforced by summary denial of motion where brief has not been filed. Hansen v. Kiernan, — M —, 499 P 2d 787.

CHAPTER 7—QUALIFICATIONS, APPOINTMENT AND DISCIPLINE OF JUDICIAL OFFICERS

Section 93-702. Qualifications.
93-704. Residence and qualifications of justices of the peace.
93-705. Judicial nomination commission—creation—composition.
93-706. Terms of commission members—vacancy.
93-707. Secretary of commission.
93-708. Quorum.
93-709. Investigation of candidates—application for candidacy.
93-710. Submission of list to governor to fill vacancy.
93-711. Appointment by governor from list submitted.
93-712. Governor's failure to nominate.
93-713. Confirmation by senate—interim appointment.
93-714. Term of appointment—election for unexpired term.
93-715. Members of commission ineligible for judicial office.
93-716. No compensation—expenses.
93-717. Rules of commission.
93-718. Judicial standards commission—composition.
93-719. Terms of office of commission members.
93-720. Termination of membership—vacancy.
93-721. No compensation—expenses.
93-722. Investigation of judicial officers—complaint—hearing—disciplinary action.
93-723. Proceedings confidential—rules.
93-724. Determination and order by supreme court.
93-725. Judicial officer not to participate in investigation of self or relative.
93-726. Disqualification of judge pending criminal prosecution or proceeding before commission.
93-727. Suspension on conviction of crime—final disposition.
93-728. Order for retirement—removal.

93-701. (8862) **Repealed.**

Repeal

Section 93-701 (Sec. 160, C. Civ. Proc. 1895), relating to qualifications of justices of the supreme court, was repealed by Sec. 2, Ch. 15, Laws 1973. For new law, see sec. 93-702.

93-702. (8863) **Qualifications.** No person is eligible for the office of justice of the supreme court or judge of the district court unless he is a citizen of the United States, who has resided in the state two (2) years immediately before taking office, and has been admitted to practice law in Montana for at least five (5) years prior to the date of appointment or election. A judge of the district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he shall reside in the district for which he is elected or appointed during his term of office. Justices of the supreme court shall reside within the state.

History: En. Sec. 161, C. Civ. Proc. 1895; re-en. Sec. 6309, Rev. C. 1907; re-en. Sec. 8863, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1973. Cal. C. Civ. Proc. Sec. 157.

Amendments

The 1973 amendment combined sections 93-701 and 93-702; eliminated age requirements for justices of the supreme court and district judges; increased the state residency requirement for district judges from one year to two years; added the requirement of five years' admission to practice for both supreme court justices and district court judges; applied the qualifications to appointments as well as elections; and added the last sentence.

Repealing Clause

Section 2 of Ch. 15, Laws 1973 read "Section 93-701, R. C. M. 1947, is repealed."

93-704. (8865) **Residence and qualifications of justices of the peace.** Every justice of the peace must reside in the county in which his court

is held, and no person is eligible to the office of justice of the peace unless he shall have been a citizen of the United States and a resident of the county, in which he is to serve, for one year next preceding his election or appointment.

History: En. Sec. 163, C. Civ. Proc. 1895; re-en. Sec. 6311, Rev. C. 1907; re-en. Sec. 8865, R. C. M. 1921; amd. Sec. 13, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 159.

Amendments

The 1973 amendment substituted "county" for "township" near the beginning of the section.

93-705. Judicial nomination commission — creation — composition. There is created a judicial nomination commission for the state of Montana, whose function it shall be to provide the governor with a list of candidates for nominee to fill any vacancy on the supreme court or any district court of the state of Montana. The commission shall be composed of seven (7) members as follows:

(1) four (4) lay members, who are neither judges or attorneys, active or retired, and who shall reside in different geographical areas of the state; each of these four (4) members shall be representative of a different industry, business or profession, whether or not actively so engaged or retired; such members shall be appointed by the governor;

(2) two (2) attorneys, actively engaged in the practice of law, one (1) from each congressional district, who shall be appointed by the supreme court;

(3) one (1) district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court, and which for the purpose of the language of this act shall be considered as an appointment.

History: En. Sec. 1, Ch. 470, L. 1973.

Title of Act

An act providing for the filling of vacancies in the office of district court judge and supreme court justice to comply with article VII, section 8 of the 1972 Montana constitution; repealing sections 93-209, 93-220, 93-309, R. C. M. 1947.

93-706. Terms of commission members—vacancy. (1) All original members named to the commission shall all serve until January 1, 1976. Their successors shall serve as follows:

(a) the members appointed by the governor shall serve for four (4) year terms;

(b) the attorneys elected shall serve a two (2) year term;

(c) the judge elected shall serve a two (2) year term.

(2) Thereafter all members shall serve terms of four (4) years.

(3) In the event a vacancy on the commission occurs, the governor shall appoint a replacement for the remainder of the term, provided such replacement shall be a member of the same group as the member he replaces.

(4) Appointments provided for in this section shall be made within thirty (30) days of the completion of the preceding terms, or within thirty (30) days of the occurrence of any vacancy.

History: En. Sec. 2, Ch. 470, L. 1973.

93-707. Secretary of commission. The commission shall elect one (1) of its members to serve as the secretary, and upon such election shall notify the governor of the name and mailing address of such person; the secretary shall keep a record of all proceedings by the commission, and act as corresponding secretary with the governor's office.

History: En. Sec. 3, Ch. 470, L. 1973.

93-708. Quorum. Four (4) members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor, there must be a concurrence of at least four (4) members.

History: En. Sec. 4, Ch. 470, L. 1973.

93-709. Investigation of candidates—application for candidacy. The commission and each member is authorized to make investigations concerning the qualifications of eligible persons, and any lawyer in good standing who has the qualifications set forth by law for holding judicial office, may be a candidate, and may make application to the commission for consideration, or application may be made by any person on his behalf.

History: En. Sec. 5, Ch. 470, L. 1973.

93-710. Submission of list to governor to fill vacancy. The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within thirty (30) days from the date of the vacancy a list of not less than three (3), nor more than five (5) persons.

History: En. Sec. 6, Ch. 470, L. 1973.

93-711. Appointment by governor from list submitted. The governor must make an appointment from those names submitted by the commission.

History: En. Sec. 7, Ch. 470, L. 1973.

93-712. Governor's failure to nominate. If the governor fails to nominate within thirty (30) days after receipt of the list, the chief justice or acting chief justice shall make the nomination.

History: En. Sec. 8, Ch. 470, L. 1973.

93-713. Confirmation by senate—interim appointment. Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session is effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.

History: En. Sec. 9, Ch. 470, L. 1973.

93-714. Term of appointment—election for unexpired term. A nominee confirmed by the senate serves until the next succeeding general election. The candidate elected at that election holds the office for the remainder of the unexpired term.

History: En. Sec. 10, Ch. 470, L. 1973.

93-715. Members of commission ineligible for judicial office. Members of the commission are not eligible for nomination to a judicial office during their term on the commission or for one (1) year thereafter.

History: En. Sec. 11, Ch. 470, L. 1973.

93-716. No compensation—expenses. The members of the commission are not entitled to compensation for their services, but they are entitled to actual expenses while actually engaged in the discharge of their official duties.

History: En. Sec. 12, Ch. 470, L. 1973.

93-717. Rules of commission. The commission shall make rules for the conduct of its affairs and to provide for the confidentiality of its proceedings.

History: En. Sec. 13, Ch. 470, L. 1973.

Repealing Clause

Section 14 of Ch. 470, Laws 1973 read "Sections 93-209, 93-220, and 93-309, R. C. M. 1947, are repealed."

93-718. Judicial standards commission — composition. There is created a judicial standards commission consisting of five (5) members as follows:

(1) two (2) district court judges, from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court and the two (2) so elected certified as to such election by the chief justice of the supreme court which for the purpose of the language of this act shall be considered as an appointment.

(2) one (1) attorney who has practiced law in this state for at least ten (10) years, appointed by the supreme court.

(3) two (2) citizens from different congressional districts who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: En. Sec. 1, Ch. 95, L. 1973.

Title of Act

An act creating a judicial standards commission and specifying the composition and the qualifications of the members in compliance with article VII, section 11 of the 1972 Montana constitution.

93-719. Terms of office of commission members. (1) The first appointments made under this act are as follows:

(a) the supreme court shall designate by certificate of the chief justice one (1) district court judge to serve for four (4) years, and one (1) to serve for two (2) years;

(b) the attorney shall serve for four (4) years; and

(c) the governor shall appoint one (1) citizen to serve for four (4) years, and one (1) to serve for two (2) years.

(2) Thereafter, all terms shall be for four (4) years.

History: En. Sec. 2, Ch. 95, L. 1973.

93-720. Termination of membership—vacancy. (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 95, L. 1973.

93-721. No compensation—expenses. A commission member is not entitled to compensation for his services but is entitled to actual expenses incurred in the performance of his duties.

History: En. Sec. 4, Ch. 95, L. 1973.

93-722. Investigation of judicial officers—complaint—hearing—disciplinary action. (1) The commission, or any citizen of the state may upon good cause shown, initiate an investigation of any judicial officer in the state by filing a verified written complaint with the commission.

(2) The commission, after such investigation as it considers necessary and upon the finding of good cause, may:

(a) order a hearing to be held before it concerning the censure, suspension, removal or retirement of a judicial officer; or

(b) request the supreme court to appoint one (1) or more special masters, who are judges of courts of record, to hear and take evidence and to report to the commission.

(3) If after hearing or after considering the record and report of the masters, the commission finds the charges true, it shall recommend to the supreme court the censure, suspension, removal or retirement of the judicial officer.

History: En. Sec. 5, Ch. 95, L. 1973.

93-723. Proceedings confidential—rules. (1) All papers filed with, and proceedings before the commission or masters are confidential.

(2) The filing of papers with and the testimony given before the commission or masters is privileged communication.

(3) The commission shall make rules for the conduct of its affairs and provide for the confidentiality of its proceedings.

History: En. Sec. 6, Ch. 95, L. 1973.

93-724. Determination and order by supreme court. (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal or retirement of a judicial officer, or

(b) wholly reject the recommendation.

History: En. Sec. 7, Ch. 95, L. 1973.

93-725. Judicial officer not to participate in investigation of self or relative. A judicial officer who is a member of the commission or of the supreme court shall not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of a relative within the sixth degree of consanguinity or that of the spouse of such a relative.

History: En. Sec. 8, Ch. 95, L. 1973.

93-726. Disqualification of judge pending criminal prosecution or proceeding before commission. A judge is disqualified from acting as a judge, without loss of salary, while there is pending:

(1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law, or

(2) a formal proceeding before the commission for his removal or retirement.

History: En. Sec. 9, Ch. 95, L. 1973.

93-727. Suspension on conviction of crime—final disposition. (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law, or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates, and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

History: En. Sec. 10, Ch. 95, L. 1973.

93-728. Order for retirement—removal. (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973.

CHAPTER 9—DISQUALIFICATION OF JUDICIAL OFFICERS

Section 93-901. Cases in which judge may be disqualified—calling in another judge.

93-901. (8868) Cases in which judge may be disqualified—calling in another judge. Any justice, judge, or justice of the peace must not sit or act as such in any action or proceeding:

1. To which he is a party, or in which he is interested;

2. When he is related to either party by consanguinity or affinity within the sixth degree, computed according to the rules of law;

3. When he has been attorney or counsel for either party in the action or proceeding, or when he rendered or made the judgment, order, or decision appealed from;

4. When either party makes and files an affidavit as hereinafter provided, that he has reason to believe, and does believe, he cannot have a fair and impartial hearing or trial before a district judge. Such

affidavit may be made by any party to an action, motion, or proceeding, personally, or by his attorney or agent, and shall be filed with the clerk of the district court in which the same may be pending.

In any judicial district having only one judge the affidavit of disqualification with reference to any action or proceeding to be tried before a jury must be filed at least one day before the day appointed or fixed by the court for setting the trial calendar; provided, however, this limitation shall not apply unless notice of such setting date shall be given to all parties by the clerk of the district court at least fifteen (15) days prior thereto. In all other cases the affidavit must be filed at least fifteen (15) days before the day appointed or fixed for the hearing or trial of any such action, motion, or proceeding (provided such party shall have had notice of the hearing of such action, motion, or proceeding for at least the period of fifteen (15) days and in case he shall not have had notice for such length of time, he shall file such affidavit immediately upon receiving such notice). Upon the filing of the affidavit, the judge as to whom said disqualification is averred shall be without authority to act further in the action, motion, or proceeding, but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the action or proceeding to some other court nor to the power of calling in another district judge to sit and act in such action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. No more than two judges can be disqualified in said action or proceeding, at the instance of the plaintiff, and no more than two at the instance of the defendant, in said action or proceeding, and this limitation shall apply however many parties or persons in interest may be plaintiffs or defendants in such action or proceeding. If there be more than one judge in any judicial district in which said affidavit is made and filed, upon the first disqualification of a judge in the cause, another judge, residing in the judicial district wherein the affidavit is made and filed, must be called in to preside in such action, motion or proceeding; upon the second or any subsequent disqualification of a judge in the cause, a district judge of another judicial district of the state must be called in to preside in such action, motion, or proceeding, or the action, motion, or proceeding transferred to a district judge of another judicial district of the state; when another judge has assumed jurisdiction of an action, motion, or proceeding, the clerk of the district court in which the same was pending, shall at once notify the parties or their attorneys of record in the same, either personally or by registered mail, of the name of the judge called in, or to whom such action, motion, or proceeding was transferred. Such second or subsequent affidavit of disqualification shall be filed with the clerk of the district court in which such action, motion or proceeding may be pending within three days after the party or his attorney of record, filing such affidavit, has received notice as to the judge assuming jurisdiction of such action, motion, or proceeding.

History: Ap. p. Sec. 453, p. 134, Bannack Stat.; re-en. Sec. 610, p. 159, Cod. Stat. 1871; re-en. Sec. 530, p. 179, L. 1877; re-en. Sec. 530, 1st Div. Rev. Stat. 1879; re-en. Sec. 547, 1st Div. Comp. Stat. 1887; amd. Sec. 180, C. Civ. Proc. 1895; amd. Ch. 3, 2nd Ex. L. 1903; re-en. Sec. 6315, Rev. C. 1907; amd. Sec. 1, Ch. 114, L.

1909; re-en. Sec. 8868, R. C. M. 1921; amd. Sec. 1, Ch. 93, L. 1927; amd. Sec. 1, Ch. 218, L. 1961; amd. Sec. 1, Ch. 82, L. 1963; amd. Sec. 1, Ch. 234, L. 1965. Cal. C. Civ. Proc. Sec. 170.

Amendment

The 1965 amendment deleted "by reason of the bias or prejudice of such judge" at the end of the first sentence of subdivision 4; divided subdivision 4 into two paragraphs; and made a minor change in punctuation.

Repealing Clause

Section 2 of Ch. 234, Laws 1965 repealed all acts and parts of acts in conflict therewith.

Effective Date

Section 3, of Ch. 234, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 8, 1965.

Constitutionality

The 1965 amendment of this section, deleting the words "by reason of the bias and prejudice of such judge," does not impair the constitutionality of this section, since the affidavit will still be required to state that the party has reason to believe and does believe he cannot have a fair and impartial hearing or trial before the district judge. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

This section does not violate the separation of powers provision of section 1, article IV of the Montana constitution in that it does not impinge upon the existence or supremacy of the judicial system nor alter its jurisdiction or duties, but is a reasonable manner of providing a fair trial for all litigants. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Compelling Disqualification

Where district court judge attempted to comply with affidavit of disqualification, but was unsuccessful in calling in a district court judge from another judicial district, and was also unsuccessful in attempting to comply with order to show cause, mandamus proceedings against him were dropped but not against a second district court judge who believed he had original jurisdiction and challenged the constitutionality of this section. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Custody Award

District court judge was without jurisdiction to award custody where affidavits of disqualification were filed prior to court's final disposition of various motions even though motion for new trial was pending. State ex rel. Ross v. District Court, 150 M 233, 433 P 2d 778.

Mandamus

Mandamus is the appropriate remedy to compel a disqualified judge to perform a mandatory duty resting upon him to call in another judge or transfer the cause to another department or court. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

New Trial

This section should not be construed to permit disqualification of a judge pending motion for a new trial because of the provisions of Rule 59(d), M. R. Civ. P. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Parties Entitled to File

Grandnephew who claimed heirship in an intestate estate and who filed a petition to determine heirship was a party within the meaning of this section, and district court erred in quashing timely affidavit of disqualification filed by him. In re Estate of Brown, 158 M 413, 492 P 2d 914.

Pretrial Hearing

Affidavit to disqualify judge from nonjury trial was valid where filed fifteen days prior to trial date despite party's previous consent to a determination of motions at pretrial hearing presided over by judge named in disqualification affidavit. State ex rel. OB-Gyn Group of Billings, Montana v. District Court, — M —, 494 P 2d 931.

Remanded Cause

District judge should have honored affidavit of disqualification filed more than four months before day fixed for hearing where mandate of supreme court in remanding cause left it to the district court to make a determination as to the amount due the plaintiffs in the event that sum was not settled between the parties themselves. State ex rel. Gage v. District Court, 148 M 284, 419 P 2d 746, 747.

Time for Disqualification

Statutory time for filing affidavit was not extended because counsel learned of trial only day before it began, since under this section attorney's right to request disqualification is derived from party's right and is not an independent right. State ex rel. Kidder v. District Court of Fourth Judicial District In and For County of Sanders, 155 M 442, 472 P 2d 1008.

References

State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39; State ex rel. McNeal v. District Court, 144 M 550, 399 P 2d 997; State ex rel. Kinman v. District Court, 146 M 74, 404 P 2d 517.

CHAPTER 11—MISCELLANEOUS PROVISIONS RESPECTING COURTS AND JUDICIAL OFFICERS

Section 93-1107. Judges' retirement system—definitions.
93-1108. Montana judges' retirement system.
93-1109. Montana judges' retirement board.
93-1110. Administrative expenses.
93-1111. Payments into the Montana judges' retirement fund—investment.
93-1112. Rules and regulations—actuarial data.
93-1113. Membership.
93-1114. Service allowance.
93-1115. Payments by contributors.
93-1116. Contributions by the state of Montana.
93-1117. Vesting of proportional retirement.
93-1118. Retirement allowance.
93-1119. Disability retirement allowance.
93-1120. Involuntary retirement allowance.
93-1121. Penalty retirement allowance.
93-1122. Refunds in case of resignation or discharge.
93-1123. Payments upon death.
93-1124. Payments in case of death from natural cause.
93-1125. Monthly payments of retirement allowances.
93-1126. Exemption from taxes and execution.
93-1127. Nomination of beneficiary.
93-1128. Service in the armed forces of the United States.
93-1129. Fraud—correction of errors.
93-1130. Call of retired judge for duty.
93-1131. Optional retirement allowance.
93-1132. Transfer of dormant accounts to pension accumulation fund.

93-1101. (8877) Subsequent applications for orders refused, etc.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1102. (8878) Violations of preceding section.

Frivolous Appeal

Where attorney specified as error in his appellate brief in a second action, the same point raised in his complaint in a previous action involving the same parties, the appeal was frivolous and damages were assessed in favor of the respondents. Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-1107. Judges' retirement system—definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

"Accumulated deductions"—the total of the amounts deducted from the salary of a contributor and paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

"Beneficiary"—shall be such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

"Retired judge"—any person in receipt of a retirement allowance under this act.

"Board"—the Montana judges' retirement board.

"Penalty retirement age"—seventy (70) years of age.

"Contributor"—any person who has accumulated deductions in the fund standing to his credit.

"Final salary"—the annual salary for the office retired from as of the date of retirement.

"Actuarial equivalent"—the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

"Fund"—the Montana judges' retirement fund.

"Involuntary retirement"—a retirement not for cause and before retirement age.

"Member's annuity"—payments for life derived from contributions made by the contributor.

"Retirement allowance"—the state annuity plus the member's annuity.

"State annuity"—payments for life derived from contributions made by the state of Montana.

History: En. Sec. 1, Ch. 289, L. 1967; amd. Sec. 1, Ch. 218, L. 1969.

Compiler's Notes

Chapter 218, Laws 1969 was passed by the constitutional majority of both houses of the 41st legislative assembly over the veto of the governor.

Title of Act

An act relating to the judicial department of the state of Montana; providing for the retirement of district judges and justices of the supreme court, subject to thereafter being called into service for the performance of certain judicial duties under the direction of the supreme court and providing an allowance of actual expenses for such service; defining the terms used in this act; establishing a Montana judges' retirement system; creating a Montana judges' retirement board; providing for payment of the expense of administering this act, and for payments into the Montana judges' retirement fund; providing for the establishment and enforcement of rules and regulations; requiring membership in public employees' retirement system and for payments thereto by each judge not heretofore a member thereof; providing a service allowance based on length of service; requiring payments into the Montana judges' retirement fund by deductions from members' salaries; providing for contributions by the state of Montana, and for payment into the Montana judges' retirement fund of one-quarter of fees collected by clerks of district court and by the clerk of the supreme court; specifying length of service and age requirements necessary for retirement; providing the method of computing retirement allowance; providing for a disability retirement allowance and an involuntary retirement allowance; specifying penalty retirement age and providing for a retirement allowance forfeiture; providing for payments upon death; providing for monthly payments of retirement allowances, for exemption from taxes and execution, for nomination of beneficiary, and for options available to judges entering military service; providing certain optional methods of payment of retirement allowance; providing for transfer of accounts dormant for ten (10) years; and providing a savings clause declaring the provisions of this act to be severable.

Amendments

The 1969 amendment rewrote the definition of "Final salary" which was formerly defined as "the annual current salary for the office retired from."

93-1108. Montana judges' retirement system. A retirement system is hereby established for the judges of the district court and justices of the supreme court of the state of Montana.

History: En. Sec. 2, Ch. 289, L. 1967.

93-1109. Montana judges' retirement board. There is hereby created a Montana judges' retirement board, hereinafter referred to as the "board." The board shall consist of five (5) members who shall be the same persons as those who compose the board of administration of the public employees' retirement system.

History: En. Sec. 3, Ch. 289, L. 1967.

93-1110. Administrative expenses. (1) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid from the Montana judges' retirement account.

(2) Before July 15, 1970 and before July 15 of each year thereafter, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the Montana judges' retirement account to the public employees' retirement system account in the earmarked revenue fund.

History: En. Sec. 4, Ch. 289, L. 1967; amd. Sec. 1, Ch. 23, L. 1969.

Amendments

The 1969 amendment designated the former section as subsection (1), and substituted "from the Montana judges' retirement account" for "by the state of Montana, by appropriation out of the general fund, made on the basis of budgets submitted by the board" at the end and added subsection (2).

93-1111. Payments into the Montana judges' retirement fund—investment. All appropriations made by the state of Montana, all contributions by members of the Montana judges, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the secretary of the public employees' retirement system board (PERS), who shall credit said payments to the Montana judges' retirement fund. Said funds may be co-mingled with funds of the PERS, but shall be earmarked as judges' retirement fund.

History: En. Sec. 5, Ch. 289, L. 1967.

93-1112. Rules and regulations—actuarial data. The board may establish such rules and regulations as it deems necessary and is charged within the limitations of this act for its proper administration, operation, and enforcement, and shall be the authority under this act for its proper administration, operation, and enforcement, and shall be the authority under this act as to the conditions under which persons may be admitted to and continue to receive benefits under the retirement system. It shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of

the fund, and shall adopt for the retirement system one or more mortality tables.

History: En. Sec. 6, Ch. 289, L. 1967.

93-1113. Membership. (a) Any judge or justice, who has, previous to the adoption of this act, been a member of the PERS, may elect to remain under that system; such election to be made in writing to the PERS board within three (3) months after the effective date of this act.

(b) Every judge or justice who was in service in either a district court or a supreme court of the state of Montana, prior to July 1, 1967, shall have the option and he may elect to make back payments to the date when he first entered the service of the judiciary. Such back payments may be spread over a period of five (5) years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by sixty (60), which deduction increase shall be credited to such back payments owing, and shall be continued until the full amount of such back payments shall have been completed. Any such deduction increase may be anticipated in part or in full by the contributor at any time and must be anticipated in full at the time of retirement before a retirement allowance is granted, and if not so anticipated and paid in full then a member's retirement allowance shall be calculated for the total years and months on which contributions have been made in accordance with section 12 [93-1118] of this act. Every contributor who shall elect to make such back payments shall receive full credit under this act for all contributions made into the fund and for all service credits to which he might thereby be entitled.

History: En. Sec. 7, Ch. 289, L. 1967.

93-1114. Service allowance. In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the judiciary including service rendered prior to July 1, 1967, upon complying with the provisions of this act. As soon as practicable, the retirement board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1967. Such certificate shall be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor.

History: En. Sec. 8, Ch. 289, L. 1967.

93-1115. Payments by contributors. Every member shall be required to contribute into the fund a sum equal to six per cent (6%) of his monthly salary, which sum shall be deducted from his salary and credited to his account in the fund.

History: En. Sec. 9, Ch. 289, L. 1967.

93-1116. Contributions by the state of Montana. The state of Montana shall monthly contribute to the fund a sum equal to six per cent (6%)

of the salary of each member of the Montana judiciary retirement system. In addition to the above, three-quarters (¾) of the fees collected under section 25-232, as amended, and section 25-233, as amended, shall be paid into the county treasurer on the first Monday of each month as provided in section 25-203, and the other one-quarter shall be transmitted by the clerk to the secretary of the PERS board on the first Monday of each month, and by him credited to the judicial retirement fund. The fees collected under section 82-503, as amended, shall be by the clerk of the supreme court paid by him, three-quarters (¾) into the state treasury to be credited to the general fund, and one-quarter (¼) of which shall be paid by him to the secretary of the PERS board, which shall be credited to the credit of the judicial retirement fund. The full amount of such fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the accrued retirement and expenses provided for herein.

History: En. Sec. 10, Ch. 289, L. 1967.

93-1117. Vesting of proportional retirement. Any member who has completed at least five (5) years or more service, and has reached the age of sixty-five (65), may retire and receive the proportional retirement allowances provided in section 12 [93-1118].

History: En. Sec. 11, Ch. 289, L. 1967.

93-1118. Retirement allowance. Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement and the state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of three and one-third per cent (3⅓%) per year of his final salary for the first fifteen (15) years' service, and one per cent (1%) per year for each year's service thereafter.

History: En. Sec. 12, Ch. 289, L. 1967.

93-1119. Disability retirement allowance. In case of the total disability of a contributor, permanent in character, regardless of length of service of the contributor, a disability retirement allowance shall be granted the contributor in an amount calculated on the actuarial equivalent of the member's annuity and the state annuity standing to his credit at the time of his disability retirement; provided, that if such total disability is a direct result of any service to the Montana judiciary in line of duty, then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of one-half (½) of his final salary or the allowance provided in section 12 [93-1118], whichever is greater. In the event of any disability not caused in the line of duty after attaining the age of sixty (60) years, the maximum monthly payment shall be the retirement allowance as provided in section 12 [93-1118].

History: En. Sec. 13, Ch. 289, L. 1967.

93-1120. Involuntary retirement allowance. Should a contributor be discontinued from service, not voluntarily, after having completed five (5) years of total service, but before reaching retirement age, he shall, upon filing of application in the manner herein provided for retirement, be paid as he may elect as follows:

(a) the full amount of accumulated deductions standing to his credit; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions standing to his credit, plus the actuarial equivalent of a state annuity having a value equal to the present value of a state annuity then standing to his credit.

History: En. Sec. 14, Ch. 289, L. 1967.

93-1121. Penalty retirement allowance. Any judge or justice who becomes eligible for retirement hereunder, but fails to make application therefor, prior to his attaining the age of seventy (70) years, shall automatically waive all retirement benefits, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him; save and except that any judge or justice, who is over the age of seventy (70) years, at the time of the effective date of this act, or who shall attain such age before the expiration of his term, shall be permitted to serve out the balance of his existing term, without forfeiting said retirement. At the termination of the said existing term, if such member has failed to make application for retirement under this act, he shall automatically waive all retirement benefits hereunder, and shall receive a return of only such moneys equal to the accumulated deduction contributed by him.

History: En. Sec. 15, Ch. 289, L. 1967. **Compiler's Notes**

This act became effective July 1, 1967.

93-1122. Refunds in case of resignation or discharge. Where a contributor resigns of his own volition, or is discharged for cause before becoming entitled to a retirement allowance, then the deductions standing to his credit shall be paid to him.

History: En. Sec. 16, Ch. 289, L. 1967.

93-1123. Payments upon death. If the board shall find that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary. Such retirement allowance shall consist of:

(a) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and

(b) the actuarial equivalent of a state annuity which when added to the member's annuity will provide a total annuity equal to the allowance provided for in section 12 [93-1118].

History: En. Sec. 17, Ch. 289, L. 1967.

93-1124. Payments in case of death from natural cause. (a) If the retired judge or justice dies before receiving in payments the present

value of his member's annuity and the state annuity as it was at the time of his retirement, the balance shall be paid to his beneficiary.

(b) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in section 14 [93-1120].

History: En. Sec. 18, Ch. 289, L. 1967.

93-1125. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and shall not be increased, decreased, revoked or repealed unless by act of the legislative assembly of the state of Montana. No retirement allowances can be approved by the board while the member is drawing full compensation as a judge or justice.

History: En. Sec. 19, Ch. 289, L. 1967.

93-1126. Exemption from taxes and execution. Any money received or to be paid as a member's annuity, state annuity or return of deductions or the right of any of these, shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment or any other process whatsoever and shall be unassignable.

History: En. Sec. 20, Ch. 289, L. 1967.

93-1127. Nomination of beneficiary. Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board.

History: En. Sec. 21, Ch. 289, L. 1967.

93-1128. Service in the armed forces of the United States. Any member of the Montana judiciary now in or hereafter inducted into the armed forces of the United States, shall have the option:

(a) to continue his payments into the fund; or

(b) allow the board to make his payments for him during such military service, in which event he shall repay the fund the full amount of such payments upon his return to the Montana judiciary, and such repayments must be made within two (2) years after his return to the judiciary provided that a member's service in the armed forces of the United States shall be credited to and made a part of the member's service allowance.

History: En. Sec. 22, Ch. 289, L. 1967.

93-1129. Fraud—correction of errors. (a) No person shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system herein established in any attempt to defraud such system.

(b) Should any such change in records fraudulently made or any mistake in records inadvertently made result in any contributor or beneficiary receiving more or less than he would have been entitled to had the records been correct, then, on the discovery of such error, the board shall correct such error and shall adjust the payments which shall be made

to the contributor or annuitant in such manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid.

Any person violating any of the provisions of subsection (a) of this section shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine not exceeding one thousand dollars ($1,000) or suffer imprisonment not exceeding one (1) year, or both, in the discretion of the court.

History: En. Sec. 23, Ch. 289, L. 1967.

93-1130. **Call of retired judge for duty.** Every judge or justice receiving retirement pay under the provisions of this act, shall, if physically and mentally able, be subject to call by the supreme court or the chief justice thereof to aid and assist the supreme court or any district court under such directions as the supreme court may give, including the examination of the facts and cases before the court, the examination of authorities cited and the preparation of opinions for and on behalf of the court, which opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of such court and such court and such retired judge or justice may, subject to any rule which the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases in so far as not inconsistent with the constitution of the state. Such retired judge or justice when called to service as herein provided shall be reimbursed for his actual expenses, if any, in responding to such call.

History: En. Sec. 24, Ch. 289, L. 1967.

93-1131. **Optional retirement allowance.** Until the first payment on account of any retirement allowance is made and subject to the conditions that, if he die after retirement and within thirty (30) days from the date upon which his election or changed election is received at the office of the retirement board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement. A member or a beneficiary may elect, or revoke or change a previous election prior to the approval of the previous election to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement, allowance, payable throughout life with one of the following options:

Option 1. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 2. Upon his death, one-half (½) of his lesser retirement allowance shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he nominates by written designation duly executed and filed with the board at the time of his retirement.

Option 3. Such other benefit or benefits shall be paid, either to the beneficiary or to such other person or persons as he nominates, as,

together with such lesser retirement allowance, are the actuarial equivalent of his retirement allowance, and shall be approved by the board.

History: En. Sec. 25, Ch. 289, L. 1967.

93-1132. Transfer of dormant accounts to pension accumulation fund. The board may in its discretion transfer the savings account of a member to the pension accumulation fund if the account has been dormant for a period of ten (10) years, provided that no right of the member shall be jeopardized by such transfer and the savings account shall be transferred to the member's name upon subsequent re-entry to membership.

History: En. Sec. 27, Ch. 289, L. 1967.

Separability Clause

Section 26 of Ch. 289, Laws 1967 read "The provisions of this act are severable, and, if any of its provisions shall be held to be unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein."

CHAPTER 12—JURIES—DIFFERENT KINDS DEFINED

Section 93-1205. Number of a trial jury.

93-1205. (8887) Number of a trial jury. A trial jury consists of twelve (12) persons; provided, that in civil actions and cases of misdemeanor, it may consist of twelve (12), or any number less than twelve (12), upon which the parties may agree in open court, and further provided that in all civil actions where the relief asked for in the complaint is under the sum of ten thousand dollars ($10,000), then a trial jury may in the discretion of the trial judge consist of six (6) persons, and that two-thirds (⅔) of the jury may render a verdict; provided further, that where a six (6) person jury is authorized by law, each side shall have two (2) peremptory challenges, and they shall be exercised by the plaintiff first striking one (1), and the defendant then striking one (1), and so on, until each side has exhausted or waived his rights.

History: En. Sec. 224, C. Civ. Proc. 1895; re-en. Sec. 6334, Rev. C. 1907; re-en. Sec. 8887, R. C. M. 1921; amd. Sec. 4, Ch. 203, L. 1939; amd. Sec. 1, Ch. 293, L. 1971. Cal. C. Civ. Proc. Sec. 194.

Amendments

The 1971 amendment added the second and third provisos; and made minor changes in style.

93-1206. (8888) Juries in justices' courts.

Cross-References

Formation of criminal trial jury in justice or police court, sec. 95-2005.

Trial of criminal cases in justice and police courts, sec. 95-2004.

CHAPTER 13—JURORS—QUALIFICATIONS AND EXEMPTIONS

Section 93-1301. Who competent to act as juror.
93-1304. Who exempt from jury duty.

93-1301. (8890) Who competent to act as juror. A person is competent to act as a juror if:

1. A citizen of the United States of the age of eighteen (18) years, who shall have been a resident of the state one (1) year, and of the county ninety (90) days before being selected and returned.

2 to 4. * * * [Same as parent volume.]

History: Earlier statutes were Sec. 8, p. 506, Cod. Stat. 1871; amd. Sec. 1, p. 70, L. 1873; re-en. Sec. 780, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 57, L. 1881; re-en. Sec. 1304, 5th Div. Comp. Stat. 1887; re-en. Sec. 230, C. Civ. Proc. 1895; re-en. Sec. 6337, Rev. C. 1907; re-en. Sec. 8890, R. C. M. 1921; amd. Sec. 6, Ch. 203, L. 1939; amd. Sec. 1, Ch. 116, L. 1965; amd. Sec. 20, Ch. 240, L. 1971; amd. Sec. 32, Ch. 94, L. 1973. Cal. C. Civ. Proc. Sec. 198.

Amendments

The 1965 amendment deleted "and not more than seventy" after "age of twenty-one" in paragraph 1.

The 1971 amendment reduced the minimum age specified in subdivision 1 from 21 to 19 years; and made minor changes in style.

The 1973 amendment reduced the minimum age specified in subdivision 1 from nineteen to eighteen years.

Repealing Clause

Section 2 of Ch. 116, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-1304. (8893) **Who exempt from jury duty.** A person is exempt from liability to act as juror if:

1. * * * [Same as parent volume.]

2. A person holding a public office in the state, a county, township, or town;

3. to 6. * * * [Same as parent volume.]

7. An officer, keeper or attendant of a hospital, asylum, or other charitable institution;

8. and 9. * * * [Same as parent volume.]

10. An active member of the national guard of Montana, or an active member of a fire department of any city or town of this state. The number of firemen hereby exempted must not exceed twenty-eight (28), including officers for each company organized; and such members from each company must be selected from the roll of such company, according to the seniority of membership, and a list containing the names of such persons must be made out by the secretary of each company and filed with the clerk of the board of county commissioners on the first Mondays of December, March, June and September, and any failure to file the list hereby required is considered a waiver of such exemption.

11. and 12. * * * [Same as parent volume.]

The court must discharge a person from serving as a trial juror, in either of the following cases:

Where it satisfactorily appears that he or she is not competent; and,

Where it satisfactorily appears that he or she is exempt and claims the benefit of exemption.

History: Ap. p. Sec. 9, p. 506, Cod. Stat. 1871; re-en. Sec. 781, 5th Div. Rev. Stat. 1879; amd. Sec. 1, p. 56, L. 1881; amd. Sec. 1, p. 101, L. 1883; re-en. Sec. 1305, 5th Div. Comp. Stat. 1887; amd. Sec. 232, C. Civ. Proc. 1895; re-en. Sec. 6339, Rev. C. 1907; amd. Sec. 1, Ch. 20, L. 1917; re-en. Sec. 8893, R. C. M. 1921; amd. Sec. 7, Ch. 203, L. 1939; amd. Sec. 1, Ch. 425, L. 1971. Cal. C. Civ. Proc. Sec. 200.

Amendments

The 1971 amendment inserted "in the state" in subdivision 2; deleted "almshouse" in subdivision 7; and made minor changes in phraseology and style.

CHAPTER 14—JURORS—SELECTION AND RETURN

Section 93-1404. Duty of clerk—jury boxes.

93-1404. (8899) Duty of clerk—jury boxes. The clerk shall prepare and keep a jury box and contents as follows: The number of each juror shall be written, typed or stamped on paper or other suitable material, identical in all respects, and placed in a box of ample size to permit said numbers to be thoroughly mixed, and which said box shall be kept for that purpose and shall be known as, and plainly marked, "jury box No. 1." The numbers may be used as often as necessary; provided, however, none shall be used which is in any manner whatsoever defaced or disfigured, or so marked that it may be recognized or distinguished from the others in said jury box No. 1 except by the number thereon. There shall be so enclosed in said box one number, and only one number, corresponding to the number before the name of each juror on the jury list.

History: En. Sec. 243, C. Civ. Proc. 1895; re-en. Sec. 6345, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1919; re-en. Sec. 8899, R. C. M. 1921; amd. Sec. 2, Ch. 168, L. 1957; amd. Sec. 1, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 209.

Amendment

The 1969 amendment deleted "and enclosed in separate black capsules" after "suitable material"; substituted references to "numbers" for references to "capsules" wherever appearing; and, in the last sentence, substituted "number before the name of each juror" for "corresponding to the name of each juror."

DECISIONS UNDER FORMER LAW

Color of Capsules

Identical opaque capsules, though not black as formerly required by statute, were not such deviation as to constitute material departure from provisions of statute since the price of black capsules was approximately five times that of other available capsules, and hence an additional burden on taxpayer, and since no unfairness in selection of jurors would result from using another opaque colored capsule. In re Jury Box Capsules, 150 M 583, 447 P 2d 687.

CHAPTER 15—JURORS—DRAWING AND SUMMONING FOR COURTS OF RECORD

Section 93-1503. Drawing—how conducted.
93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors.

93-1503. (8904) Drawing — how conducted. 1. The clerk must place said box on a rod so that the same may readily revolve and said box must be revolved a sufficient number of times so as to ensure that the numbered slips in said box shall become thoroughly mixed, and thereafter the judge must draw from said box one (1) at a time, as many of the numbered slips as are ordered by the court.

2 and 3. * * * [Same as parent volume.]

4. No person shall be asked to serve on more than one term during any year unless all the numbers in jury box No. 1 have been drawn and there are no other qualified jurors available.

History: En. Sec. 262, C. Civ. Proc. 1895; re-en. Sec. 6350, Rev. C. 1907; amd. Sec. 2, Ch. 35, L. 1919; re-en. Sec. 8904, R. C. M. 1921; amd. Sec. 1, Ch. 148, L.

1933; amd. Sec. 2, Ch. 151, L. 1937; amd. Sec. 2, Ch. 3, L. 1939; amd. Sec. 4, Ch. 168, L. 1957; amd. Sec. 2, Ch. 110, L. 1969. Cal. C. Civ. Proc. Sec. 219.

Amendments

The 1969 amendment, in subsection (1), twice substituted "numbered slips" for "capsules," the latter referring to separate black capsules containing each juror's number; substituted "the" for "such" before the last reference to "numbered slips"; and added subsection (4).

93-1504 to 93-1506. (8905 to 8907) **Repealed.**

Repeal

Sections 93-1504 to 93-1506 (Secs. 263 to 265, C. Civ. Proc. 1895; Secs. 3 to 5, Ch. 35, L. 1919; Sec. 2, Ch. 148, L. 1933; Secs. 5 to 7, Ch. 168, L. 1957), relating to the drawing of jurors from jury boxes Nos. 2 and 3, were repealed by Sec. 4, Ch. 110, Laws 1969.

93-1510, 93-1511. (8911, 8912) **Repealed.**

Repeal

Sections 93-1510 and 93-1511 (Secs. 281, 282, C. Civ. Proc. 1895; Secs. 8, 9, Ch. 168, L. 1957), relating to the drawing and summoning of jurors, were repealed by Sec. 4, Ch. 110, Laws 1969.

93-1512. Drawing additional jurors when original number insufficient—order designating number needed—selection from portion of county only—notification of jurors. Whenever it appears to a district judge that additional jurors will be needed for any term or trial the judge shall draw as many numbers from jury box No. 1 as are necessary to secure the required number of additional jurors. Before drawing the numbers the judge shall by appropriate order designate the number of jurors needed, and, when the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense then he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order then that number shall be returned to the jury box and a new number drawn. When the required number of names have been selected the judge may order the prospective jurors notified by telephone by the clerk of the court or he may order them summoned by the sheriff either by certified mail or by personal service.

History: En. Sec. 3, Ch. 110, L. 1969.

Title of Act

An act amending sections 93-1404 and 93-1503, R. C. M. 1947, to provide for a change in the method of drawing jurors and to eliminate the jury boxes numbered two and three and to provide for a change in the method of notifying jurors; repealing sections 93-1504, 93-1505, 93-1506, 93-1510 and 93-1511, R. C. M. 1947.

Repealing Clause

Section 4 of Ch. 110, Laws 1969 read "Sections 93-1504, 93-1505, 93-1506, 93-1510, and 93-1511, R. C. M. 1947, are repealed."

CHAPTER 16—JURORS—SUMMONING FOR JUSTICES' AND INFERIOR COURTS AND COURTS OF INQUEST

Section 93-1602. How to be summoned.

93-1602. (8914) **How to be summoned.** Such jurors must be summoned from the persons competent to serve as jurors, residents of the

county, city, or town in which such court has jurisdiction, by notifying them orally that they are summoned, and of the time and place at which their attendance is required.

History: En. Sec. 291, C. Civ. Proc. 1895; re-en. Sec. 6360, Rev. C. 1907; re-en. Sec. 8914, R. C. M. 1921; amd. Sec. 14, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 231.

Amendments

The 1973 amendment substituted "county" for "township."

CHAPTER 18—JURIES—HOW IMPANELED—ALTERNATES

Section 93-1801. Grand jury—when and how to be impaneled.
93-1802. How constituted.

93-1801. (8918) **Grand jury—when and how to be impaneled.** Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of such jurors to be drawn, which must not be less than fifteen (15) nor more than twenty (20). The names of such jurors must be drawn from jury box No. 1, mentioned in section 93-1404, and the list of names certified and summoned, as provided for drawing and summoning trial jurors, and the names of any persons drawn who may not be impaneled upon the grand jury must be again placed in said jury box No. 1.

History: En. Sec. 320, C. Civ. Proc. 1895; re-en. Sec. 6364, Rev. C. 1907; re-en. Sec. 8918, R. C. M. 1921; amd. Sec. 4, Ch. 3, L. 1973. Cal. C. Civ. Proc. Sec. 241.

Amendments

The 1973 amendment increased the number of jurors specified in the second sentence from not less than ten nor more than fifteen to not less than fifteen nor more than twenty.

93-1802. (8919) **How constituted.** When, of the persons summoned as grand jurors competent and not excused, eleven (11) are present, they constitute the grand jury. If more than eleven (11) of such persons are present, the clerk must write their names on separate ballots, and place the ballots in black capsules, which the capsules shall be deposited in a box large enough to hold all of the capsules without crowding, and which the box shall be so arranged that the clerk drawing the capsules from the box shall be unable to observe or see the capsule he is about to draw, and draw out eleven (11) of them, and the persons whose names are on the ballots so drawn shall constitute the grand jury. If less than eleven (11) of such persons are present, the court may order a sufficient number to be forthwith drawn from either box and summoned to attend the court. And whenever, of the persons to complete a grand jury, more attend than are required, the requisite number must be obtained by writing the names of those so summoned and not excused on ballots, which the ballots shall be placed in black capsules, and thereafter deposited in a box, and then drawn as above provided.

History: En. Sec. 321, C. Civ. Proc. 1895; re-en. Sec. 6365, Rev. C. 1907; amd. Sec. 7, Ch. 35, L. 1919; re-en. Sec. 8919, R. C. M. 1921; amd. Sec. 5, Ch. 3, L. 1973. Cal. C. Civ. Proc. Sec. 242.

Amendments

The 1973 amendment increased the number of jurors specified from seven to eleven in four places; and made minor changes in phraseology.

93-1803. (8920) **Manner of impaneling grand jury prescribed.**

Compiler's Notes

Sections 94-6301 to 94-6319 referred to in this section, were repealed by Sec. 2, Ch. 196, Laws of 1967. For new law, see sections 95-1401 to 95-1409.

CHAPTER 19—COURT REPORTERS

Section 93-1906. Salary and expenses of reporter—apportionment.

93-1903. (8930) **Matters written out and filed.**

Compiler's Notes

Section 93-5505, referred to in this section in the parent volume, was superseded by M. R. App. Civ. P., Rules 9, 10, and 25.

93-1906. (8933) **Salary and expenses of reporter — apportionment.** Every reporter appointed under the provisions of this chapter receives an annual salary of twelve thousand five hundred dollars ($12,500) and no other compensation except as provided in section 93-1904, provided, however, that all transcripts and bills of exceptions required by the county shall be furnished without cost, payable in monthly installments out of the general funds of the counties comprising the district for which he is appointed, according and in proportion to the number of civil and criminal actions entered and commenced in the district courts of such counties respectively in the preceding year; and it shall be the duty of the judge of such district, on the first day of January of each year, or as soon thereafter as may be, to apportion the amount of such salary to be paid by each county in his district on the basis aforesaid. The reporter is allowed, in addition to the salary and fees above provided, in judicial districts comprising more than one (1) county, his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto, said expenses to be apportioned and payable in the same way as the salary.

History: En. Sec. 375, C. Civ. Proc. 1895; re-en. Sec. 6378, Rev. C. 1907; amd. Sec. 1, Ch. 80, L. 1909; re-en. Sec. 8933, R. C. M. 1921; amd. Sec. 1, Ch. 36, L. 1927; amd. Sec. 1, Ch. 73, L. 1945; amd. Sec. 1, Ch. 49, L. 1951; amd. Sec. 1, Ch. 125, L. 1953; amd. Sec. 1, Ch. 76, L. 1955; amd. Sec. 6, Ch. 22, L. 1961; amd. Sec. 1, Ch. 114, L. 1965; amd. Sec. 1, Ch. 221, L. 1967; amd. Sec. 1, Ch. 192, L. 1969; amd. Sec. 1, Ch. 183, L. 1973. Cal. C. Civ. Proc. Secs. 271 and 274.

Amendments

The 1965 amendment increased the salary set forth near the beginning of the section from $6,600 to $7,800.

The 1967 amendment increased the annual salaries of court reporters from $7,800 to $8,800.

The 1969 amendment increased annual salaries of court reporters from $8,800 to $9,200.

The 1973 amendment increased the reporter's annual salary from $9,200 to $12,500.

CHAPTER 20—ATTORNEYS—QUALIFICATIONS—ADMISSION—LICENSE AND DISBARMENT

Section 93-2001. Who may be admitted as attorneys.

93-2001. (8936) **Who may be admitted as attorneys.** Any citizen or person, resident of this state, who has bona fide declared his or her

intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the courts of this state. All persons are attorneys of the supreme court who are entitled to practice in the supreme court when this code takes effect.

History: Earlier acts relating to admission and powers of attorneys were Secs. 1-15, pp. 370-373, Bannack Stat.; re-en. Secs. 1-15, pp. 375-378, Cod. Stat. 1871; re-en. Secs. 40-54, 5th Div. Rev. Stat. 1879; re-en. Secs. 102-116, 5th Div. Comp. Stat. 1887.

This section en. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R. C. M. 1921; amd. Sec. 11, Ch. 168, L. 1971. Cal. C. Civ. Proc. Sec. 275.

Amendments

The 1971 amendment deleted "of the age of twenty-one years" from the first sentence.

93-2002. (8937) Qualifications, examination and admission.

Constitutionality

Grant of diploma privilege to graduates of University of Montana law school while requiring graduates of other accredited schools to take bar examination did not constitute an unconstitutional denial of equal protection of laws. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

Diploma Privilege

Familiarity of supreme court justices with University of Montana law school and its faculty and students justifies continuation of practice of admitting graduates without examination. Goetz v. Harrison, 154 M 274, 462 P 2d 891.

Jurisdiction of District Court

District court had no jurisdiction of an action contesting the validity of this section and seeking restraining order against members of supreme court in their official capacity. Goetz v. Harrison, 153 M 403, 457 P 2d 911.

93-2026. (8961) Disbarment of attorneys—causes—jurisdiction.

Conviction of Crime

Conviction by a jury in a federal court of the offense of devising and intending to devise a scheme to defraud and to obtain money by means of false and fraudulent pretenses warranted attorney's disbarment. In re Gross, — M —, 503 P 2d 995.

Misappropriation

The conduct of an attorney in opening a checking account in the name of an estate of which he had been appointed executor and making withdrawals for his personal use constituted deceit and malpractice involving moral turpitude. In re O'Donnell, 143 M 51, 387 P 2d 303.

Moral Delinquencies in General

Disbarment was justified for attorney who had been previously disciplined by reprimand and who, after having been charged with debauching young girl, represented her procurer in criminal proceedings, represented both parties in procurer's divorce action, represented girl in quashing affidavit after procurer had married her, and represented another defendant charged with raping the girl. In re Keast, — M —, 497 P 2d 103.

Moral Turpitude

Failure of attorney to make return of employees' withholding taxes was offense involving moral turpitude under this section so as to justify indefinite suspension from practice. In re Kline, 156 M 177, 477 P 2d 881.

Even though an act falls short of an offense involving moral turpitude under case law prior to adoption by the supreme court of the canons of professional ethics, it may justify disbarment. Even though an individual act or omission may in and of itself be insufficient grounds for action, repeated violations establishing a pattern of conduct revealing a gross disregard for the highest standards of honesty, justice or morality may and should be grounds for disbarment, suspension, censure or a request for surrender of license to practice law. In re Advisory Opinion to Commission on Practice, 156 M 514, 495 P 2d 1128.

CHAPTER 21—ATTORNEYS—DUTIES—LIABILITIES AND COMPENSATION

93-2102. (8975) Change of attorney.

Death of Client

Attorney was authorized to represent deceased client for whom there was filed a praecipe signed by counsel indicating withdrawal of previous counsel and requesting entry of name of new attorney for deceased even though signed and filed by counsel after death of client. State ex rel. Ross v. District Court, Fourth Judicial Dist., 150 M 233, 433 P 2d 778.

93-2106. (8979) Punishment for willful delay.

Actual Damages

Under this section, only actual damages may be trebled, not the statutory interest due. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Fiduciary Duty

Where attorney paid off client's mortgage with stipulation to receive client's inheritance when it came due, failure to give money to client under transaction, which was a breach of attorney's fiduciary duty, subjected attorney to treble damages. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

93-2120. (8993) Lien for compensation.

Obligations of Third Parties

Fact that settlement of personal injury claim by attorneys for their client incidentally benefited hospital by creating fund from which its bill for treatment of client could be paid did not create an implied contract by hospital to pay attorneys for their services; neither was hospital obligated to share settlement proceeds on a subrogation theory. Sisters of Charity of Providence of Montana v. Nichols, 157 M 106, 483 P 2d 279.

Priority of Liens

Where settlement in personal injury case was paid in three drafts, lien of attorneys representing injured party attached to all three drafts; since amount of drafts was sufficient to satisfy attorneys' fees in full, previously subordinate hospital lien became the senior outstanding lien against the balance of the settlement proceeds notwithstanding that attorneys did not actually collect their fees; attorneys and injured party could not require payment of a prorata share of attorneys' fees from that portion of settlement proceeds otherwise payable to hospital under its lien rights. Sisters of Charity of Providence of Montana v. Nichols, 157 M 106, 483 P 2d 279.

Unemployment Compensation Cases

This section being in conflict with sections 87-142 and 87-143, relating to unemployment compensation claims, the latter sections, being more specific, should control over this section, which is more general, especially where, in light of the services rendered, the attorney's fees could be considered "necessaries" under section 87-143. McAlear v. Unemployment Compensation Commission, 145 M 458, 405 P 2d 219.

Waiver of Lien

Failure of attorney to deduct expenses incurred in obtaining award in case and his expressed intention that he would collect expenses from future settlements constituted waiver of his lien for expenses. Gross v. Holzworth, 151 M 179, 440 P 2d 765.

CHAPTER 25—LIMITATION OF ACTIONS FOR RECOVERY OF REAL PROPERTY

93-2504. (9015) Seizin within five years, etc.

Public Highway

Public highway was established by prescription on evidence that members of public had used road openly for more than fifty years without ever having obtained permission from owners, that previous owner had considered road a public highway, that road had been maintained by county for some 24 years and that public had never been denied use of road. Kostbade v. Metier, 150 M 139, 432 P 2d 382.

93-2507. (9018) Possession—when presumed, etc.

Public Highway

Where county adversely paved and maintained a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land even though the private owner was assessed for and paid taxes on the property during the running of the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Use for Less than Statutory Period

Adverse use for less than full statutory period of five years confers no right or interest upon the adverse user, so that there was no consideration for an alleged contract granting an easement over another route. Larson v. Burnett, 158 M 421, 492 P 2d 921.

93-2508. (9019) Occupation under written instrument or judgment, etc.

Tolling of Statute

Statute of limitations did not toll during period when Indian plaintiff was attempting to persuade the United States to bring action against vendee of Indian's land on grounds that sale was fraudulent. Dillon v. Antler Land Co., 341 F Supp 734.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2509. (9020) What constitutes adverse possession, etc.

Possession under Color of Title

Certificate of assignment given to person paying delinquent taxes on realty did not give that person color of title and did not bring him within ambit of this section. Magelssen v. Atwell, 152 M 409, 451 P 2d 103.

93-2511. (9022) What constitutes adverse possession, etc.

Conflicting Evidence

Finding of district court that adverse possession was not established was affirmed, in light of record disclosing conflicting testimony on question of existence and upkeep of fences and conflicting testimony on question whether and who ran livestock on property during the prescriptive period. Johnson v. Silver Bow County, 151 M 283, 443 P 2d 6.

Necessary Intent

No adverse possession was established where plaintiff did not, by any of actions, show requisite intent to possess adversely, particularly in view of letter in which plaintiff admitted that defendants owned the disputed land. Magelssen v. Atwell, 152 M 409, 451 P 2d 103.

93-2513. (9024) Occupancy and payment of taxes necessary, etc.

Burden of Proof

The burden of proving all the essential elements of adverse possession is upon the party alleging it and he must prove that no taxes were levied or assessed against the land or that he has paid all taxes which were levied thereon. Townsend v. Koukol, 148 M 1, 416 P 2d 532, 536.

Easement

Where the county maintained and paved a highway over the land of a private party for a period of more than ten years, such county acquired an easement by prescription over the land and it was not necessary that the county pay taxes on the property during the statutory period. Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

Essential Elements

To constitute adverse possession, the possession must be actual, feasible, exclusive, hostile and continuous for the full period of years and the party asserting adverse possession must have paid all the taxes levied and assessed upon the property during the statutory period. Townsend v. Koukol, 148 M 1, 416 P 2d 532, 535, 536.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

CHAPTER 26—LIMITATION OF OTHER ACTIONS

Section 93-2612. Actions relating to bond issues, time for bringing.
93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years.
93-2620. Exception—injury occurring during tenth year.
93-2621. Responsibility of person in control not affected.
93-2622. Time of completion of improvements to real property.
93-2623. Other limitation periods not extended.
93-2624. Actions for medical malpractice.

93-2603. (9029) Within eight years.

Nonparticipating Oil Royalty

Where wife agreed to property settlement granting her a percentage of royalties should oil ever be found on land, such right did not vest until oil production began and her action for royalties was not barred by the fact that it had been more than eight years since execution of the settlement. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

93-2604. (9030) Within five years.

Damage to Building from Broken Water Pipes

This section did not apply to action by owners of apartment building against realtors for water damages to building from bursting of water pipes due to alleged negligence of realtors in caring for the building. The claim was barred by statute of limitations relating to injury to or waste or trespass on property, section 93-2607. Quitmeyer v. Theroux, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

Decedents' Estates

Five-year-limitation period under this section did not include time between decedent's death and issuance of letters of administration to defendant. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

Partial Bar by Statute

Fact that plaintiff had been awarded full judgment for services rendered without regard to limitation period under this section did not require that entire verdict be set aside but only that the judgment be reduced by value of services rendered prior to five year period, since the claim was divisible. Cartwright v. Joyce, 155 M 478, 473 P 2d 515.

References

Hager v. Tandy, 146 M 531, 410 P 2d 447.

93-2605. (9031) Within three years.

Amendment of Complaint

Three-year limitation for tort actions did not preclude amendment of complaint to correct misnomer by which defendant was referred to erroneously as Illinois corporation rather than as Delaware corporation; federal rule was applied in allowing the amendment. Wentz v. Alberto Culver Co., 294 F Supp 1327.

Exhaustion of Administrative Remedies

Cause of action on statutory bond did not accrue until required administrative proceedings were complete and board had made final determination of amount due. Montana Milk Control Board v. Hartford Accident & Indemnity Co., 153 M 299, 456 P 2d 302.

Malpractice

Where sponge had been left in patient's body in operation performed ten years previously, patient's cause of action for malpractice did not accrue until patient learned that such foreign object was in his body. Johnson v. St. Patrick's Hospital, 148 M 125, 417 P 2d 469, 473.

Product Liability

Where plaintiff developed cataracts following use of defendant's drug, there was question of fact as to whether publicity connecting the drug and cataracts was sufficient to put plaintiff on notice as to cause of his cataracts, thus to start the statute running, and motion for summary judgment for defendant, based on statute of limitations, was denied. Hornung v. Richardson-Merrill, Inc., 317 F Supp 183.

Wrongful Death

This section, rather than section 93-2607, applies to an action from wrongful death. Bryant v. Hall, 157 M 28, 482 P 2d 147, overruling Smith v. Wiprud, 154 M 325, 463 P 2d 317.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2607. (9033) Two-year limitation.

Claim and Delivery

In an action for claim and delivery, where possession by the defendant is rightful, the statute of limitations begins to run when the defendant refuses upon demand to return the property. Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

Damage by Fire

Two-year statute of limitations under this section barred suit brought by the United States under section 82-1237 for damage to property caused by alleged negligence of defendants in setting forest fire. United States v. Eytcheson, 237 F Supp 371.

Damage to Building from Broken Water Pipes

Claim of owners of an apartment building against realtors for water damage to building from bursting of water pipes due to alleged negligence of realtors in caring for the building was barred by this section. Statute of limitations concerning implied contracts, section 93-2604, was inapplicable. Quitmeyer v. Theroux, 144 M 302, 395 P 2d 965, 969, 970. (Dissenting opinion, 144 M 302, 395 P 2d 965, 971.)

Fraud and Mistake

An action by administrator of estate of deceased against surviving partners to recover assets which had been transferred by deceased during his last illness was timely filed on July 25, 1960 where fraud was not discovered until December 1, 1958. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 491.

Action to rescind contract for sale of real estate was barred when not brought within two years after discovery of fraud by all parties concerned. Rock v. Birdwell, 149 M 449, 429 P 2d 634.

Quiet title action based on husband's fraud of wife's community property and instituted within two years of discovery of facts constituting fraud was timely even though brought as counterclaim. Rozan v. Rosen, 150 M 121, 431 P 2d 870.

Trial court properly granted defendant's motion for summary judgment in action for fraudulent representation, or in alternative breach of contract, in sale of tractor since plaintiff's having failed to state claim in complaint for breach of contract made tort statute applicable and tort action was barred by this section. Israelson v. Mountain Tractor Co., 155 M 69, 467 P 2d 149.

Where plaintiff developed cataracts following use of defendant's drug, evidence that wide publicity had been given to causal relationship between drug and cataracts did not establish that plaintiff was charged with knowledge of such relationship so as to constitute discovery under subsection 4 of this section. Hornung v. Richardson-Merrill, Inc., 317 F Supp 183.

Injury to Personal Property

An action by an adoptive father and natural grandfather under section 93-2809 is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under subdivision 2 of this section. LaTray v. Mannix Electric Co., 148 M 303, 419 P 2d 744, 745; but see Bryant v. Hall, 157 M 28, 482 P 2d 147.

Injury to Real Property

Where defendant's geophysical exploration injured plaintiff's real property, statute of limitations under subdivision 2 of this section was not tolled by plaintiff's decision to permit defendant to repair the damage with approximately one year remaining under the statute. Carlson v. Ray Geophysical Division, 156 M 450, 481 P 2d 327.

Negligent Misrepresentation

Action for negligent misrepresentation is action for fraud within meaning of statute and is subject to two-year statute of limitations which begins to run when plaintiff acquires knowledge of facts constituting negligent misrepresentation. Falls Sand & Gravel Co. v. Western Concrete, Inc., 270 F Supp 495.

Nuisance

In action for alleged well pollution, trial court erred in not limiting recovery to two years before filing date of complaint since, under circumstances, pollution of ground water by dumping of glue waste was continuing temporary nuisance and this section applied. Nelson v. C & C Plywood Corp., 154 M 414, 465 P 2d 314, 39 ALR 3d 893.

Two year statute of limitation was applicable to continuous and unremitting nuisance; recovery for damage occurring as a result of continuous and unremitting nuisance more than two years prior to the commencement of an action was barred by this section. Lahman v. Rocky Mountain Phosphate Co., — M —, 504 P 2d 271.

Statutory Liability

The cause of action based on a railroad's statutory duty to maintain a ce-

ment drop, siphon and wooden flume on its right of way did not accrue on the taking of the right of way nor on the abandonment of the right of way and notice to water rights owners that it would no longer maintain the works, but rather would accrue only after injury occurred from the railroad's failure to maintain the works. Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

Cause of action under federal civil rights statute for improper search accrued at the time of the search, not at the time the search was adjudicated invalid or when criminal prosecution was terminated, so that action brought more than two years after the search was barred by this section. Strung v. Anderson, 452 F 2d 632.

Wrongful Death

Section 93-2605, rather than subdivision 2 of this section, applies to an action for wrongful death. Bryant v. Hall, 157 M 28, 482 P 2d 147, overruling Smith v. Wiprud, 154 M 325, 463 P 2d 317.

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588; Hager v. Tandy, 146 M 531, 410 P 2d 447.

93-2612. (9040) **Actions relating to bond issues, time for bringing.** No action can be brought for the purpose of restraining the issuance and sale of bonds or other obligations by the state of Montana or any school district, county, city, town, or political subdivision of the state, or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations, after the expiration of sixty (60) days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of sixty (60) days from the date of the order, resolution or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or not holding the election; nor shall any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period. This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

History: En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R. C. M. 1921; amd. Sec. 15, Ch. 158, L. 1971.

Amendments

The 1971 amendment completely rewrote this section. For prior text, see parent volume.

93-2613. (9041) **Actions for relief not hereinbefore provided for.**

References

Rhodes v. Weigand, 145 M 542, 402 P 2d 588.

93-2619. Action for damages arising out of or resulting from construction of improvements to real property—ten years. Except as provided in sections 2 and 3 [93-2620 and 93-2621] of this act, no action to recover damages (other than an action upon any contract, obligation, or liability, founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of, or land surveying done in connection with, any improvement to real property shall be commenced more than ten (10) years after completion of such improvement.

History: En. Sec. 1, Ch. 60, L. 1971.

Title of Act

An act to provide a period of ten years within which an action for damages arising out of certain services or work on improvements to real property must be commenced; and providing an effective date.

93-2620. Exception—injury occurring during tenth year. Notwithstanding the provisions of section 1 [93-2619] of this act, an action for such damages for an injury which occurred during the tenth year after such completion may be commenced within one (1) year after the occurrence of such injury.

History: En. Sec. 2, Ch. 60, L. 1971.

93-2621. Responsibility of person in control not affected. The limitation prescribed by this act shall not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement at the time a right of action arises.

History: En. Sec. 3, Ch. 60, L. 1971.

93-2622. Time of completion of improvements to real property. As used in this act, the term "completion" means that degree of completion at which the owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier.

History: En. Sec. 4, Ch. 60, L. 1971.

93-2623. Other limitation periods not extended. Nothing in this act shall be construed as extending the period prescribed by the laws of this state for the bringing of any action.

History: En. Sec. 5, Ch. 60, L. 1971.

Effective Date

Section 6 of Ch. 60, Laws 1971 read "In order to provide a reasonable period for commencement of any action for which a right of action has heretofore accrued, this act shall be effective January 1, 1972."

93-2624. Actions for medical malpractice. Action for injury or death against a physician or surgeon, dentist, registered nurse, nursing home administrator, dispensing optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, a licensed hospital or long-term care facility as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be commenced within three (3) years after the date of injury or three (3) years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury whichever occurs last, but in no case may such action be commenced after five (5) years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or omission upon which such action is based and which is known to him, or through the use of reasonable diligence subsequent to said act, error or omission would have been known to him.

History: En. Sec. 1, Ch. 328, L. 1971; amd. Sec. 1, Ch. 191, L. 1973.

Title of Act

An act to prescribe the period of limitations in which actions for professional negligence can be commenced.

Amendments

The 1973 amendment inserted "nursing home administrator" and "long-term care facility" in the first sentence.

CHAPTER 27—TIME OF COMMENCEMENT OF ACTIONS—GENERAL PROVISIONS CONCERNING

93-2703. (9049) Exception as to persons under disabilities.

Insanity Tolling Statute

Where plaintiff was insane for approximately five months following personal injuries, statute did not begin to run until he recovered his sanity and action was timely filed when commenced within statutory period after that date. State ex rel. Hi-Ball Contractors, Inc. v. District Court, 154 M 99, 460 P 2d 751.

93-2708. (9054) Provision where judgment has been reversed.

Dismissal of Counterclaim

Quiet title action based on husband's fraud of wife's community property instituted as counterclaim and timely brought under statute of limitations but dismissed on husband's motion may be properly instituted as principal action within one year after involuntary dismissal. Rozan v. Rosen, 150 M 121, 431 P 2d 870.

Neglect to Prosecute

Dismissal under M. R. Civ. P., Rule 41 (e), for failure to have summons issued within one year after commencement of the action is a dismissal for neglect to prosecute within the meaning of this section, and this section does not operate to permit the commencement of a new action after expiration of the statute of limitations. State ex rel. Equity Supply Co. v. District Court, — M —, 494 P 2d 911.

CHAPTER 28—PARTIES TO CIVIL ACTIONS

93-2809. (9075) Parent or guardian may sue for injury, etc.

Limitation of Actions

An action by an adoptive father and natural grandfather under this section is an action for an injury to a pecuniary interest of the parent, therefore one for an injury to a property right which must be commenced within two years from the date the claim arose under section 93-2607(2). LaTray v. Mannix Electric Co., 148 M 303, 419 P 2d 744, 745, but see Bryant v. Hall, 157 M 28, 482 P 2d 147.

Mother Bringing Action

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

93-2810. (9067) When representative may sue for death, etc.

Limitation of Actions

An action under this section for wrongful death is governed by the three-year limitation in section 93-2605 rather than by the two-year limitation in section 93-2607. Bryant v. Hall, 157 M 28, 482 P 2d 147, overruling Smith v. Wiprud, 154 M 325, 463 P 2d 317.

References

Stiles v. Gove, 345 F 2d 991, 992.

93-2823. (9085) Tenants in common, etc., may sever in bringing, etc.

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. Lowe & Lynn v. Flank Oil Co., 144 M 499, 398 P 2d 608.

93-2824. (9086) Action—when not to abate by death, marriage, etc.

Loss of Earnings

Where, in survivorship action under this section, jury returned verdict based only upon personal property belonging to decedent destroyed in accident, and awarded no damages for loss of earning capacity,

district court did not abuse its discretion in granting new trial on damages only, since jury could not "disregard uncontradicted, credible nonopinion evidence" establishing decedent's earning capacity. Putman v. Pollei, 153 M 406, 457 P 2d 776.

Personal Injuries Action

Suit for personal injuries filed by decedent prior to his death survived in favor of administratrix of his estate. Pickett v. Kyger, 151 M 87, 439 P 2d 57.

Wrongful Death Action

Where defendant's negligence caused a boat collision, injured decedent but not seriously enough to cause death, and knocked him into the water where he drowned, there must have been an appreciable time between the collision and death, so that decedent had a cause of action for his injuries which survived. Stephens v. Brown, — M —, 503 P 2d 667.

Decedent's mother was real party in interest in wrongful death action where decedent left no surviving wife nor children and his father was dead. Cowan v. Pacific Gamble Robinson Co., 232 F Supp 403, 405.

CHAPTER 29—PLACE OF TRIAL OF CIVIL ACTIONS

Section 93-2906. Place of trial may be changed in certain cases.
93-2908. Papers to be transmitted—costs and fees—jurisdiction.

93-2901. (9093) Certain actions to be tried where the subject, etc.

References

Beavers v. Rankin, 142 M 570, 385 P 2d 640; Tassie v. Continental Oil Co., 228 F Supp 807, 808; Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2902. (9094) Other actions—where the cause, etc.

Governor

Complaint that governor's executive order establishing multi-county planning districts was inconsistent with legislative resolution stated a cause of action arising in the county of the governor's official residence, and venue should have been changed to Lewis and Clark county. Guildroy v. Anderson, — M —, 497 P 2d 688.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365.

93-2903. (9595) Place of trial of actions against counties.

Action by County against Nonresident

This section does not require a change of venue where a county brings action against a nonresident in the district court of that county. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 808.

93-2904. (9096) Other actions, according to the residence, etc.

Burden of Proof

In contract action, once defendant showed that his place of residence was other than where suit was brought, the burden of proof was on the plaintiff to meet the motion for change of venue. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Change of Venue

Although express terms of construction loan agreement between borrowers residing in Lewis and Clark County and lender in Cascade County did not designate place of performance of the contract, district court of Lewis and Clark County properly denied motion of lender for change of venue of action for breach of the contract, where borrowers' affidavit in opposition to the motion showed that the contract was to be performed in Lewis and Clark County, the loan agreement, note and mortgage being executed in Lewis and Clark County for home to be built in that county and inspection, supervision and completion of the home were to take place in Lewis and Clark County where all bills were to be paid. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

Denial of defendant's motion for change of venue to place where he resided was

improper, since, where plaintiff-relator did not plead the commission agreement itself, nor include it as an exhibit, there was no way of considering the venue matter except on the residence of the defendant. Rapp v. Graham, 145 M 371, 401 P 2d 579.

The provisions of this section are permissive only and where five separate actions were brought in four widely separated counties against the same defendant involving the same accident, court did not abuse its discretion in granting change of venue under section 93-2906, subdivision 3, to the place where the tort occurred, for the convenience of the witnesses. Putro v. Mannix Electric, Inc., 147 M 314, 412 P 2d 410.

Under statute providing that on proper motion court must change place of trial when convenience of witnesses and ends of justice would be promoted and under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed, which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. Truck Ins. Exchange v. National Farmers Union Property & Cas. Co., 149 M 387, 427 P 2d 50.

Construction

Statutory provisions creating exceptions to the general rule recognizing a defendant's privilege to be sued in his own county will not be given a strained or doubtful construction. Rapp v. Graham, 145 M 371, 401 P 2d 579.

Foreign Corporations

A foreign corporation does not acquire residence for venue purposes in a particular county by appointing a resident of that county as its agent for service of process, and it may be sued in any county. Foley v. General Motors Corp., — M —, 499 P 2d 774.

Performance of Contract

In an action for breach of an oral agreement to lease farm land, venue was in the county where the estate of one of the defendants was being probated, in which the other defendants resided, in which the land was located, and in which service was made and the creditor's claim filed. Erickson v. Toy, 142 M 121, 385 P 2d 268.

If contract is to be performed in a county other than the county of defendant's residence, then the plaintiff has his choice of the two counties in which to sue. He may sue in the county where defendant resides or in the county where the contract is to be performed. The provisions of this section are permissive. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

In order for plaintiff to maintain action on contract in a county where defendant does not reside, the place of performance must be evident either by express terms of contract, or by necessary implication that a county other than that of defendant's residence is intended to be the county of performance. Brown v. First Federal Savings & Loan Assn. of Great Falls, 144 M 149, 394 P 2d 1017, 1019.

To maintain suit in county other than that of defendant's residence, plaintiff must show clearly the facts relied on to bring the case within one of the exceptions to the rule. The contract must state clearly that it is to be performed in county other than that of defendant's residence so that no other fair construction can be placed upon it. Rapp v. Graham, 145 M 371, 401 P 2d 579.

In bringing suit where contract is to be performed, rather than place of defendant's residence, a mere direction by the seller as to the place of payment is not sufficient to maintain venue within exception to this section, nor can a promise to remit to cover the purchase price be sued upon by the seller in the county of the point to which the remittance is to be made. Rapp v. Graham, 145 M 371, 401 P 2d 579.

In suit against seller for breach of express warranty against diseased cattle, buyer properly exercised option in initiating suit in county where cattle were delivered as county where contract was to be performed. Neely v. Steinbach, 149 M 119, 423 P 2d 584.

Contract clause expressly requiring defendant to perform by making payments in county other than defendant's county of residence came within performance exception in statute thereby entitling plaintiff to institute action on contract in county in which payments were to be made. McGregor v. Svare, 151 M 520, 445 P 2d 571.

In action on account for grazing rentals on lands owned or controlled by plaintiff, trial court erred in granting motion for change of venue where action was predicated upon contract to be performed in county where action was brought. Cormier Bros., Inc. v. Willcutt, 154 M 297, 462 P 2d 889.

"Place of performance" rule regarding venue in contract actions was inapplicable in action based on implied contract that did not sepcify place of payment; change of venue to county where defendants resided was proper. Bick v. Haidle, 156 M 350, 480 P 2d 818.

Tort Actions

Attorney's advice to a client that a personal injury action had to be filed in the county where the cause arose was not improper or unethical. Petition of Wasson, 143 M 323, 389 P 2d 406.

Although either the county of residence of defendant or county where tort was committed was proper county in which to bring action for personal injury arising from accident, where none of the defendants were residents of Montana, the action was triable in any county designated by plaintiff in his complaint. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Defendant is not entitled to a change of venue in personal injury action where plaintiff filed the action in the proper county. Tassie v. Continental Oil Co., 228 F Supp 807, 809.

Where personal injury action arising from accident occurring in Fallon County, Montana, was commenced in Silver Bow County, Montana, by nonresident plaintiff, and nonresident defendants in removing action to federal district court designated Billings Division, but stated no statutory grounds for change of venue and did not show good cause for assignment to Billings Division, plaintiff was entitled to change of venue to Butte Division in which Silver Bow County was located. Tassie v. Continental Oil Co., 228 F Supp 807, 810.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; Yeager v. Foster, 146 M 330, 406 P 2d 370.

93-2906. (9098) **Place of trial may be changed in certain cases.** The court or judge must, on motion, change the place of trial in the following cases:

1. to 3. * * * [Same as parent volume.]

4. When the judge is disqualified from acting for any cause; but no change of the place of trial shall be made if:

(a) the parties agree in writing upon another district judge, or member of the bar as judge pro tempore, or

(b) any qualified district judge is called in, and within thirty (30) days after the motion is made, appears and assumes jurisdiction of the cause and of all matters and proceedings therein.

If the judge so appears he shall be vested with, and shall exercise, all the authority of the judge of the district in which the action or proceeding may be pending.

History: Ap. p. Sec. 21, Bannack Stat.; amd. Ch. 8, L. 3d Session 1866, which was set aside by Act of Congress of March 2, 1867; amd. Sec. 1, p. 68, L. 1867; amd. Sec. 27, p. 31, Cod. Stat. 1871; re-en Sec. 62, p. 53, L. 1877; re-en. Sec. 62, 1st Div. Rev. Stat. 1879; re-en. Sec. 62, 1st Div. Comp. Stat. 1887; amd. Sec. 615, C. Civ. Proc. 1895; en. Ch. 2, Ex. L. 1903; re-en. Sec. 6506, Rev. C. 1907; re-en. Sec 9098, R. C. M. 1921; amd. Sec. 1, Ch. 6, L. 1973. Cal. C. Civ. Proc. Sec. 397.

Amendments

The 1973 amendment rewrote and rearranged the language of subdivision (4) for clarity, but without change in substance.

Change of Venue

Under statute providing that on proper motion the court must change place of trial when convenience of witnesses and ends of justice would be promoted and under further statute requiring action to be tried in county in which defendants reside at commencement of action, defendants were entitled to have action moved to county upon which all agreed, which was residence of one defendant, which was place insurance contract was entered into, which was where tort occurred and which was most convenient for defendants and their witnesses. Truck Ins. Exchange v. National Farmers Union Property & Cas. Co., 149 M 387, 427 P 2d 50.

Convenience of Witnesses

Where affidavit showed that five separate actions had been brought against defendant in four widely separated counties involving the same occurrence, trial court properly granted change of venue for the convenience of the witnesses to the county where accident occurred although affidavit omitted names of witnesses and nature of their testimony.

Putro v. Mannix Electric, Inc., 147 M 314, 412 P 2d 410.

County Taxpayers as Jurors

Where county brought an action for damages done to bridge struck by defendant's truck, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was made up, necessarily, of taxpayers of that county, each of whom had a pecuniary interest of $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

Multiple Causes of Action

Where the defendant is entitled to a change of venue on one cause of action in a complaint containing more than one cause of action, the motion for change must be granted even though the other cause or causes would be triable where the plaintiff commenced the action. Beavers v. Rankin, 142 M 570, 385 P 2d 640.

Multiple Defendants

Even after dismissal from an action on tort arising outside the state of the only defendants residing in the county where the action was brought, the remaining defendants were not entitled to have the venue changed to the county of their residence so long as the plaintiff reasonably believed in good faith, when he brought the action, that he had a cause of action against the defendants resident in the county where brought. Boucher v. Steffes, — M —, 503 P 2d 659.

Time for Motion

Court's discretion in granting change of venue under subdivision 3 of this section cannot be exercised until after a defendant has answered, so that where action was brought under section 93-2904 in county where co-defendant lived, denial of first motion before defendant had answered applied only to the residency requirement of the co-defendant and did not bar determination of second motion made under this section after defendant had answered. Putro v. Mannix Electric, Inc., 147 M 314, 412 P 2d 410.

References

Tassie v. Continental Oil Co., 228 F Supp 807, 810; State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648; Yeager v. Foster, 146 M 330, 406 P 2d 370.

93-2908. (9100) Papers to be transmitted—costs and fees—jurisdiction. When an order is made transferring an action or proceeding for trial, the clerk of the court, or justice of the peace, must transmit the pleading and papers therein to the clerk or justice of the court to which it is transferred. The costs and fees thereof, and of filing the papers anew, must be paid by the party at whose instance the order was made, except that: (1) when the action is an action upon a contract, express or implied, for the direct payment of money, and no claim contained in the complaint exceeds one thousand dollars ($1,000); (2) the county designated in the complaint is not the proper county; and (3) if the plaintiff will not within ten (10) days after request stipulate for change of venue and defendant files a motion for such change and such motion is thereafter granted; then the party filing the complaint must pay all costs and fees of filing the papers anew and all costs and fees, including reasonable attorney's fees to be fixed by the court incurred by the defendant by reason of the change of venue motion and hearing. The court to which an action or proceeding is transferred has and exercises over the same the like jurisdiction as if it had been originally commenced therein.

History: En. Sec. 64, p. 53, L. 1877; re-en. Sec. 64, 1st Div. Rev. Stat. 1879; re-en. Sec. 64, 1st Div. Comp. Stat. 1887; re-en. Sec. 617, C. Civ. Proc. 1895; re-en. Sec. 6508, Rev. C. 1907; re-en. Sec. 9100, R. C. M. 1921; amd. Sec. 1, Ch. 176, L. 1971. Cal. C. Civ. Proc. Sec. 399.

Amendments

The 1971 amendment added to the second sentence the language requiring payment of costs and fees by the party filing the complaint in the instances described in the numbered clauses.

CHAPTER 30—MANNER OF COMMENCING CIVIL ACTIONS—SERVICE OF SUMMONS

93-3002. (9106) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 23, p. 47, Bannack Stat.; Sec. 23, p. 139, L. 1867; Sec. 67, p. 54, L. 1877), relating to endorsement of the complaint and issue of summons, is superseded by M. R. Civ. P., Rule 41(e) as amended by Sup. Ct. Ord. 10750.

93-3008. (9112) Superseded—Supreme Court Order 10750.

Supersession

This section (Sec. 1, Ch. 37, L. 1917; Sec. 1, Ch. 135, L. 1949; Sec. 1, Ch. 122, L. 1951), relating to service of process on corporations through the secretary of state, is superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3011, 93-3012. (9115, 9116) Superseded—Supreme Court Order 10750.

Supersession

These sections (Secs. 4, 5, Ch. 37, L. 1917), relating to service of process on corporations through the secretary of state, are superseded by M. R. Civ. P., Rule 4 D, as amended by Sup. Ct. Ord. 10750.

93-3020. (9124) Return of summons.

References

Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

CHAPTER 37—VERIFICATION OF PLEADINGS

93-3702. (9163) Verification of pleadings.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 747.

CHAPTER 41—CLAIM AND DELIVERY OF PERSONAL PROPERTY

93-4104. (9223) Undertaking and duty of sheriff.

Constitutionality

Replevin provisions which authorized state agents to seize property in possession of another person upon application of claimant and subsequent posting of bond prior to a hearing to determine parties' rights to possession are invalid as they work a deprivation of property without due process of law by denying an opportunity to be heard before chattels are taken from the possessor. Fuentes v. Shevin, 407 US 67, 32 L Ed 2d 556, 92 S Ct 1983.

CHAPTER 42—INJUNCTION

Section 93-4215. Injunction against price fixing.
93-4216. Injunction may issue without bond.

93-4203. (9242) Injuncton—when not allowed.

Discretionary Appointment

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in the proper exercise of their discretion. Steel v. Board

of Railroad Commrs., 144 M 432, 397 P 2d 101.

Enforcement of Public Statute

County commissioners and assessor cannot be enjoined from relying on reclassification officer's real property evaluations to determine tax assessment rolls. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

District court acted beyond its jurisdiction by issuing injunction to prevent board of equalization from revising grading and valuation of nonirrigated farm land pursuant to section 84-429.7 et seq. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

93-4204. (9343) **Injunction order—when granted.**

Real Estate Cases

An order enjoining landowner from proceeding with mobile home subdivision on his land until zoning regulations were adopted was improper because it was impossible to predict whether landowner's plans would conflict with zoning regulations finally adopted. State ex rel. Corning v. District Court of 18th Judicial District, 156 M 81, 474 P 2d 701.

93-4205. (9244) **Injunction order, etc.**

Injunction Granted after Hearing

Portion of statute pertaining to affidavits does not apply to injunction issued on basis of hearing on order to show cause. State ex rel. Martin v. District Court, Twelfth Judicial Dist., 151 M 41, 438 P 2d 563.

93-4206. (9245) **When notice required.**

References

State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405.

93-4215. (9254) **Injunction against price fixing.** Whenever any action, either civil or criminal, shall have been instituted in court in this state against any person or persons, corporation or corporations, foreign or domestic, for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people, the court in which such action is pending, if it be a court of record, or if not, then any court of record in this state, shall be and it is hereby authorized to issue an injunction to restrain any such person or persons, corporation or corporations, foreign or domestic, from doing business in this state pending the final determination of said action so instituted.

History: En. Sec. 1, Ch. 93, L. 1905; re-en. Sec. 6654, Rev. C. 1907; re-en. Sec. 9254, R. C. M. 1921; amd. Sec. 56, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "for price fixing or regulating the production of any article of commerce or of the product of the soil, for consumption by the people" for "for the purpose of enforcing the provisions of section 20 of article XV of the constitution of the state of Montana, or any law or laws enacted pursuant to or for carrying out the same"; and deleted "in violation of said section of the constitution, or in violation of any law or laws enacted pursuant to or for the purpose of enforcing said section of the constitution" after "doing business in this state" near the end of the section.

93-4216. (9255) **Injunction may issue without bond.** Said injunction shall issue as in cases of equity, without bond, upon the application of the county attorney of the county in which such action is pending, or upon the application of the attorney general, in the name of the state of Montana, upon a prima facie showing that an action, civil or criminal,

has been so instituted and is so pending, charging such person or persons, corporation or corporations, foreign or domestic, with such violation.

History: En. Sec. 2, Ch. 93, L. 1905; re-en. Sec. 6655, Rev. C. 1907; re-en. Sec. 9255, R. C. M. 1921; amd. Sec. 57, Ch. 100, L. 1973.

Amendments

The 1973 amendment substituted "such violation" at the end of the section for "a violation of said section of the constitution, or of any law or laws enacted thereunder."

Repealing Clause

Section 58 of Ch. 100, Laws 1973 read "Sections 3-101.1, 4-348, 16-405, 16-2407, 23-2701.1, 41-1609, 75-6410.1, 84-211 and 84-707, R. C. M. 1947, are repealed."

CHAPTER 43—ATTACHMENT

Section 93-4304. Undertaking.
93-4331.1. Release of attachment by clerk where no proceedings taken in main action.

93-4304. (9259) **Undertaking.** Before issuing the writ, the clerk must require a written undertaking on the part of the plaintiff, with two (2) or more sufficient sureties, to be approved by the clerk, in a sum not less than double the amount claimed by the plaintiff, if such amount be one thousand dollars ($1,000) or under, or, in case the amount so claimed by plaintiff shall exceed one thousand dollars ($1,000), then in a sum equal to such amount, but in no case shall an undertaking be required exceeding in amount the sum of twenty thousand dollars ($20,000). The condition of such undertaking shall be to the effect that if the defendant recovered judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing out of the attachment, not exceeding the sum specified in the undertaking. At any time within thirty (30) days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them. When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than two (2) days nor more than ten (10) days, must justify before a judge of the district court, or before the clerk thereof, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the clerk or judge shall issue an order vacating the writ of attachment.

History: Ap. p. Sec. 93, p. 61, Bannack Stat.; amd. Sec. 122, p. 156, L. 1867; amd. Sec. 12, p. 65, L. 1869; amd. Sec. 7, p. 75, L. 1870; amd. Sec. 138, p. 54, Cod. Stat. 1871; amd. Sec. 20, p. 56, L. 1874; amd. Sec. 180, p. 82, L. 1877; re-en. Sec. 180, 1st Div. Rev. Stat. 1879; amd. Sec. 6, p. 9, L. 1881; re-en. Sec. 182, 1st Div. Comp. Stat. 1887; en. Sec. 892, C. Civ. Proc. 1895; re-en. Sec. 6659, Rev. C. 1907; re-en. Sec. 9259, R. C. M. 1921; amd. Sec. 1, Ch. 15, L. 1951; amd. Sec. 1, Ch. 303, L. 1967. Cal. C. Civ. Proc. Sec. 539.

Amendments

The 1967 amendment increased the maximum amount of an undertaking from $10,000 to $20,000.

93-4314. (9267) **Garnishment—when garnishee liable to plaintiff.**

References

Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp., 353 F 2d 348.

93-4331.1. Release of attachment by clerk where no proceedings taken in main action. If a writ of attachment has been levied on real property as provided in section 93-4307, R. C. M. 1947, and no proceedings have been taken in the action in which the attachment was issued for a period of five years, the clerk of court shall upon application of the defendant or the record owner of such real property issue a release of the attachment and a copy of such release shall be filed with the county clerk where the writ of attachment and notice thereof is filed and the county clerk shall file and index such release as any other releases of attachment.

History: En. Sec. 1, Ch. 97, L. 1965.

Title of Act

An act providing that a lien of attachment on real property may be released by the clerk of court where no action has been taken to foreclose such lien for a period of five years.

93-4335. (9288) Different attachments—when liens accrue.

Conflicting Attachments

Since, for purposes of garnishment, a debt has no fixed situs but may be reached in any jurisdiction where the person found owing it can be located, Wyoming court was bound to give full faith and credit to Montana court in determining which garnishor had prior claim where writs of attachment had been issued by different parties on the same garnishee in both states. Great Falls Transfer & Storage Co. v. Pan American Petroleum Corp., 353 F 2d 348.

93-4342. (9295) Repealed.

Repeal

This section (Sec. 9295, R. C. M. 1921), relating to attachment of stocks of foreign corporations, was repealed by Sec. 143, Ch. 300, Laws 1967.

CHAPTER 44—RECEIVERS

Section 93-4401. Appointment of receiver.

93-4401. (9301) Appointment of receiver. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:

1. to 4. * * * [Same as parent volume.]

5. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

History: Ap. p. Sec. 116, p. 67, Bannack Stat.; re-en. Sec. 143, p. 160, L. 1867; re-en. Sec. 179, p. 62, Cod. Stat. 1871; en. Sec. 221, p. 93, L. 1877; re-en. Sec. 221, 1st Div. Rev. Stat. 1879; re-en. Sec. 229, 1st Div. Comp. Stat. 1887; re-en. Sec. 950, C. Civ. Proc. 1895; re-en. Sec. 6698, Rev. C. 1907; re-en. Sec. 9301, R. C. M. 1921; amd. Sec. 142, Ch. 300, L. 1967. Cal. C. Civ. Proc. Sec. 564.

Amendments

The 1967 amendment deleted subdivision 5 and redesignated former subdivision 6 as subdivision 5.

Debt as Basis for Appointment

Where bank held stock as security on loans made by farming corporation, but it appeared that stockholders were, in good faith, planning to meet their obligation and the corporation was solvent, appointment of receiver at instance of bank merely to protect the price of the stock was erroneous. State ex rel. Larry C. Iverson, Inc. v. District Court, 146 M 362, 406 P 2d 828.

Extraordinary Remedy

Appointment of a receiver being a "drastic" remedy, which deprives the lawful owner of property the right to manage and control his own interests, the power to appoint a receiver should be exercised sparingly only upon a strong showing, and not as of course. If the desired out-

come may be achieved in any other way, then this course should be followed. State ex rel. Larry C. Iverson, Inc. v. District Court, 146 M 362, 406 P 2d 828.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

93-4406. (9306) Powers of receivers.

References

Thisted v. Tower Management Corp., 147 M 1, 409 P 2d 813.

CHAPTER 49—ISSUES—MODE OF TRIAL AND POSTPONEMENT—PROCEDURE TO PROCURE JURY TRIAL

93-4910. (9332) Motion to postpone a trial, etc.

Criminal Cases

Court did not commit prejudicial error when it overruled criminal defendant's objection to county attorney's motion for continuance even though motion was not supported by required affidavit where motion was made just prior to end of trial court's day and trial resumed promptly on next morning. State v. Crockett, 148 M 402, 421 P 2d 722.

CHAPTER 50—TRIAL BY JURY—FORMATION OF JURY—CHALLENGES

Section 93-5010. Challenge.

93-5008. (9341) Ballots—when drawn from box No. 3.

Compiler's Notes

Section 93-1506 referred to in the first sentence, was repealed by Sec. 4, Ch. 110, Laws of 1969.

93-5010. (9343) **Challenge.** Each party may challenge the jury or jurors as follows:

1. to 3. * * * [Same as parent volume.]

There can be only one challenge on a side to the array or panel, which may be made by one or more of the parties. A challenge to the array or panel may be made and the whole array or panel set aside by the court, when the jury was not selected, drawn, summoned or notified as prescribed by law. Challenges to individual jurors are for cause or peremptory. Each party is entitled to four peremptory challenges, except as provided for under section 93-1205. If no peremptory challenges are taken until the panel is full, they must be taken by the parties alternately, commencing with the plaintiff.

History: Ap. p. Sec. 133, p. 69, Bannack Stat.; re-en. Sec. 161, p. 164, L. 1867; amd. Sec. 197, p. 66, Cod. Stat. 1871; amd. Sec. 248, p. 100, L. 1877; amd. Sec. 248, 1st Div. Rev. Stat. 1879; re-en. Sec. 257, 1st Div. Comp. Stat. 1887; re-en. Sec. 1059, C. Civ. Proc. 1895; re-en. Sec. 6740, Rev. C. 1907; re-en. Sec. 9343, R. C. M. 1921; amd. Sec. 1, Ch. 300, L. 1971. Cal. C. Civ. Proc. Sec. 301.

Amendments

The 1971 amendment added the exception to the fourth sentence of the second paragraph; and made a minor change in punctuation.

93-5011. (9344) Challenges for cause.

Taxpayers of Plaintiff County

Where county brought an action for damages to bridge, it was not an abuse of discretion for the district court to deny a motion for a change of venue even though the jury was necessarily made up of taxpayers of that county each of whom had a pecuniary interest averaging $31. Carter County v. Cambrian Corp., 143 M 193, 387 P 2d 904.

CHAPTER 51—TRIAL—CONDUCT OF THE TRIAL

93-5101. (9349) Order of trial.

Instructions to Jury

Plaintiff gave implied consent and waived objection by actively participating without objection in proceedings wherein trial court gave oral answer to question asked by the jury and orally confirmed the correctness of other instructions orally stated by counsel. Seder v. Peter Kiewit Sons' Co., 156 M 322, 479 P 2d 448.

References

Boehler v. Sanders, 146 M 158, 404 P 2d 885.

93-5102. (9350) View by jury of the premises.

Discretion of Trial Court

A viewing is within the discretion of the trial court, even where there has been a change in the condition of the scene of the accident or the thing which contributed to the accident. Clark v. Worrall, 146 M 374, 406 P 2d 822.

Time of Viewing

Where alterations to defendant's bowling alley had little relationship to the cause of the accident, it was not an abuse of discretion to allow the jury to view the premises on which the accident occurred after the alterations had been made. Clark v. Worrall, 146 M 374, 406 P 2d 822.

References

Wolfe v. Northern Pacific R. Co., 147 M 29, 409 P 2d 528.

93-5104. (9352) Jury may take with them certain papers.

Subsequent Request by Jury

Trial court did not err in permitting state's exhibits, consisting of photographs of scene of accident, to be taken to jury room when asked for by jury about one hour after it began deliberation. State v. Medicine Bull, 152 M 34, 445 P 2d 916.

93-5105. (9353) Deliberation of jury—how conducted.

Misconduct of Jury

When the jury retires to the jury room it should be concerned only with the evidence and the law; the verdict, thus, is a result of a fair expression of opinion by all the jurors. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

93-5106. (9354) May come into court for further instructions.

Brought into Court

Although this section provides that the jury may request that they be brought into court, this is not mandatory and the jury may send an inquiry out to the court. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 498.

Oral Instructions

Plaintiff gave implied consent and waived objection by failure to object and by active participation in proceedings wherein trial court, without the presence of a stenographer, gave oral answer to question asked by the jury and orally confirmed the correctness of other instructions orally requested by counsel. Seder v. Peter Kiewit Sons' Co., 156 M 322, 479 P 2d 448.

93-5110. (9358) Verdict—how declared—form of—polling the jury.

Poll of Jury

Court abused discretion in granting new trial based solely on ground that it had erred in refusing to grant request for poll of jury; error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that, in response

to question by judge, foreman of jury advised him they had agreed upon verdict and that, following reading of verdict, judge inquired if it was true verdict of at least eight of them and jury answered in affirmative. Martello v. Darlow, 151 M 232, 441 P 2d 175.

CHAPTER 52—THE VERDICT—GENERAL AND SPECIAL—DIRECTED WHEN

93-5205. (9364) Directed verdict—when.

Evidence Supporting Directed Verdict

Denial of motion for directed verdict by lessor of destroyed building being sued by lessee claiming that premises were repairable was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building was destroyed. Solich v. Hale, 150 M 358, 435 P 2d 883.

In negligence suit, defendant was entitled to directed verdict where only evidence attempting to establish proximate causal connection between breach of duty and plaintiff's injuries and damages were reports of persons not present at trial, which were private documents and not part of a case file of attending physicians. Pickett v. Kyger, 151 M 87, 439 P 2d 57, distinguished in 157 M 277, 285, 485 P 2d 54.

Inferences from Evidence

In passing on a motion for a directed verdict the court will consider the evidence in the light most favorable to the party against whom the motion is directed and will draw every reasonable inference from such evidence. Parini v. Lanch, 148 M 188, 418 P 2d 861, 863.

Insufficient Evidence

A directed verdict may be granted when the evidence is so insufficient in fact as to be insufficient in law. Parini v. Lanch, 148 M 188, 418 P 2d 861, 863.

Motion by Both Parties

Owner of building destroyed by gas explosion was entitled to directed verdict against general contractor who was clearly liable on evidence, but not against gas company who should have been granted its motion for directed verdict on record unequivocally demonstrating that gas company took every reasonable precaution to protect customers as required by law. Bridges v. Moritz, 149 M 273, 425 P 2d 721.

Negligence

Directed verdict on liability of defendant for injuries sustained by plaintiff, when defendant's car struck mare which was being led by rope attached to saddle on gelding upon which plaintiff was riding, was proper where negligence of defendant was shown by evidence that defendant had been drinking; that he was driving the car at 30-35 mph while passengers were hunting gophers beside the road; that defendant was not aware of the mare which he struck until the collision was inevitable; and that he failed to stop after realizing that he had struck horse in violation of section 32-1202. Parini v. Lanch, 148 M 188, 418 P 2d 861, 864.

Questions of Fact

A jury question is presented only when reasonable men might differ as to the conclusions of fact to be drawn from the evidence, viewed in the light most favorable to the party against whom the motion is made. Parini v. Lanch, 148 M 188, 418 P 2d 861, 863.

Directed verdict upholding contested will was improper where, under the evidence, reasonable and fair-minded men might have reached the conclusion that the will was invalid due to fraud, undue influence or lack of testamentary capacity. Estate of Hall v. Milkovich, 158 M 438, 492 P 2d 1388.

Review of Order Directing Verdict

In reviewing an order directing a verdict for the defendant, the supreme court would consider only the evidence of the plaintiff, excluding a bare scintilla but including every fair inference which might be drawn from the facts proved, as well as any evidence introduced by defendant which tended to support the plaintiff's case, and if the evidence viewed in the most favorable light tended to establish the case made by plaintiff's pleadings, the order would be reversed. McIntosh v. Linder-Kind Lumber Co., 144 M 1, 393 P 2d 782.

References

Holland v. Konda, 142 M 536, 385 P 2d 272; Tolson v. Tolson, 145 M 87, 399 P 2d 754.

CHAPTER 53—TRIAL BY THE COURT

93-5302. (9366) Superseded—Supreme Court Order 10750-9.

Supersession

Section 93-5302 (Sec. 1111, C. Civ. Proc. 1895), requiring decision on findings upon question of fact to be in writing and filed within twenty days after submission, was superseded by M. R. Civ. P., Rule 52(a), as amended by Sup. Ct. Ord. 10750-9.

93-5305 to 93-5307. (9369 to 9371) Superseded—Supreme Court Order 10750-9.

Supersession

Sections 93-5305 to 93-5307 (Secs. 1114 to 1116, C. Civ. Proc. 1895), relating to exceptions for defective findings and to effect of want of findings, were superseded by M. R. Civ. P., Rule 52(b), as amended by Sup. Ct. Ord. 10750-9.

CHAPTER 55—EXCEPTIONS—SETTLEMENT AND ALLOWANCE OF BILL

93-5501. (9386) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 164, p. 75, Bannack Stat.), defining an exception and providing the time when the exception must be taken, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5503. (9388) Superseded—M. R. App. Civ. P.

Supersession

This section (Ap. p. Sec. 166, p. 76, Bannack Stat.; Sec. 1, Ch. 92, L. 1905; Sec. 2, Ch. 225, L. 1921), relating to exceptions and objections, is listed as superseded in Table A of M. R. App. Civ. P. See M. R. Civ. P., Rule 46.

93-5504 to 93-5509. (9389 to 9394) Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.

Supersession

These sections (Secs. 1154 to 1158, C. Civ. Proc. 1895; Sec. 1, Ch. 35, L. 1907; Secs. 3, 4, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1941; Sec. 1, Ch. 85, L. 1955), relating to the settlement and allowance of bill of exceptions, are superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

CHAPTER 56—NEW TRIALS—GROUNDS AND MOTIONS FOR—RECORD ON APPEAL FROM FINAL JUDGMENT

93-5601. (9395) New trial defined.

Parties Restored to Original Position

The granting of a motion for a new trial restores the parties to the positions they occupied before the trial and the action is commenced anew with the parties limited to their original pleadings but unbound by previous evidence and testimony except as held by existing rules of evidence. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5602. (9396) New trial in equity cases.

Irregularity in Proceedings

In an action for specific performance where plaintiff who had no knowledge of law or procedure acted as his own counsel and, though he received some assistance from the trial judge, many errors in the proceedings were shown in the record, it was within the discretion of the judge to grant defendant's motion for a new trial. Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5603. (9397) When a new trial may be granted.

Abuse of Discretion

Aggrieved party has burden of proving that district court manifestly abused its discretion by granting new trial; prima facie case of manifest abuse of discretion may be made by discrediting grounds specified for granting new trial or showing that existing error did not materially affect substantial rights of moving party. Tigh v. College Park Realty Co., 149 M 358, 427 P 2d 57.

Where jury's verdict was based on conflicting and probably false testimony, refusal of new trial by trial court was sufficient abuse of discretion to require supreme court to reverse lower court and order new trial. Morris v. Corcoran Pulpwood Co., 154 M 468, 465 P 2d 827.

Appellate Review

In condemnation proceeding, where state appraised land at $18,000, condemnee appraised it at $95,000 and jury awarded condemnee $21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite of fact that there was no rebuttal of state's only expert witness. State Highway Commission v. Greenfield, 145 M 164, 399 P 2d 989.

Inadequate Damages

The trial court had no power in a condemnation case to condition its denial of a new trial on acceptance by the highway commission of a higher award. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Court abused its discretion in granting new trial upon grounds of insufficiency of evidence to justify verdict in that "verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. Heen v. Tiddy, 151 M 265, 442 P 2d 434.

Granting of new trial on ground that award of $4,000 was inadequate damages for death of high school sophomore whose funeral expenses were $1,605 was an abuse of discretion under the circumstances, including fact that plaintiff father received no earnings from son and gave no indication of need. Davis v. Smith, 152 M 170, 448 P 2d 133.

Instructions to Jury

Long form quotient verdict instruction from Jury Instruction Guide is not "a resort to the determination of chance" within meaning of statute in absence of showing that jurors agreed in advance that quotient thus obtained should constitute amount of verdict and adhered to that agreement. Thomas v. Whiteside, 148 M 394, 421 P 2d 449.

Where trial court erred in its instruction on assumption of risk in pedestrian injury case, trial court did not abuse its discretion by granting new trial pursuant to this section. Jankovich v. Neill, 153 M 337, 457 P 2d 475.

Jury Misconduct

In a condemnation proceeding, affidavits from jurors showing that a newspaper cartoon having to do with condemnation cases in general had been viewed by some members of the jury during the trial could not be used to support the motion for a new trial in the absence of a showing that the verdict was reached in a manner other than by a fair expression of opinion by the jurors. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97, distinguished in Goff v. Kinzle, 148 M 61, 417 P 2d 105, and in Rasmussen v. Sibert, 153 M 286, 456 P 2d 835.

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. Goff v. Kinzle, 148 M 61, 417 P 2d 105, distinguished in Rasmussen v. Sibert, 153 M 286, 456 P 2d 835.

Trial court did not err in denying plaintiff's motion for a new trial, on the ground of misconduct of the jury during its deliberations, supported by affidavits of four jurors indicating that the irregularity was not on a material matter in dispute, where plaintiff was probably not prejudiced by juror's misconduct in improperly referring to prior litigation in which plaintiff had been involved, the poll of the jury showing an eight to four verdict for the plaintiff. Schmoyer v. Bourdeau, 148 M 340, 420 P 2d 316, 317.

Trial court's granting of new trial on grounds of jury misconduct was reversible error where such motion was made under subd. 1 of this section and supported by jury affidavits, since use of jury affidavits under this section is confined to motions made under subd. 2. Rasmussen v. Sibert, 153 M 286, 456 P 2d 835.

Polling Jury

Court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury;

error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict and that following reading of verdict, signed by foreman, judge inquired of jury if it was true verdict of at least eight of them and jury answered in affirmative. Martello v. Darlow, 151 M 232, 441 P 2d 175.

Substantial Evidence

Although new trial for insufficiency of evidence is discretionary with trial court and will not be disturbed except for abuse, the discretion is exhausted when court finds substantial evidence to support verdict; evidence from which it could be found that drive-in restaurant owner had no reasonable cause to anticipate "spur of the moment" unprovoked assault upon patron supported verdict for owner in action for injuries, so that granting of new trial was abuse of discretion. Kincheloe v. Rygg, 152 M 187, 448 P 2d 140.

References

Waite v. Waite, 143 M 248, 389 P 2d 181.

93-5606. (9400) **Superseded—Supreme Court Order 10750-9.**

Supersession

Section 93-5606 (Sec. 172, p. 77, Bannack Stat.; Sec. 3, Ch. 41, L. 1907; Sec. 8, Ch. 225, L. 1921), relating to hearing on new trial motion, was superseded by M. R. Civ. P., Rule 59(d), as amended by Sup. Ct. Ord. 10750-9.

93-5607, 93-5608. (9401, 9402) **Superseded—M. R. App. Civ. P., Rules 7, 9, 10 and 25.**

Supersession

These sections (Ap. p. Sec. 289, p. 115, L. 1877; Ap. p. Secs. 1175, 1176, C. Civ. Proc. 1895; Sec. 4, Ch. 41, L. 1907; Sec. 9, Ch. 225, L. 1921), relating to a stay of proceedings on notice of motion for a new trial and contents of record on appeal, are superseded by M. R. App. Civ. P., Rules 7, 9, 10 and 25.

CHAPTER 57—JUDGMENT—MANNER OF GIVING AND ENTRY—JUDGMENT ROLL AND DOCKET—LIEN OF

Section 93-5708. Judgment lien—when it begins and when it expires.
93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence.
93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence.
93-5710.3. Validation of defective judgments or decrees affecting realty—1969 act.
93-5710.4. Validation of defective judgments or decrees affecting realty—1971 act.
93-5710.5. Validation of defective judgments or decrees affecting realty—1973 act.

93-5702. (9404) **Superseded—M. R. App. Civ. P., Rule 29.**

Supersession

This section (Sec. 174, p. 77, Bannack Stat.), providing for bringing of a case before the court for argument where the case has been reserved for argument, is superseded by M. R. App. Civ. P., Rule 29.

93-5707. (9409) **Superseded—M. R. App. Civ. P., Rules 9, 10 and 25.**

Supersession

This section (Ap. p. Sec. 203, p. 174, L. 1867; Sec. 1, Ch. 36, L. 1921; Sec. 1, Ch. 146, L. 1925), relating to the contents and filing of judgment roll, is superseded by M. R. App. Civ. P., Rules 9, 10 and 25.

93-5708. (9410) **Judgment lien—when it begins and when it expires.** Immediately after the entry of the judgment in the judgment book, the

clerk must make the proper entries of the judgment, under appropriate heads, in the docket kept by him; and from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by him at the time, or which he may afterward acquire, until the lien ceases. The lien continues for six years, unless the judgment be previously satisfied.

History: Ap. p. Sec. 180, p. 78, Bannack Stat.; en. Sec. 204, p. 174, L. 1867; re-en. Sec. 244, p. 77, Cod. Stat. 1871; amd. Sec. 1, p. 40, L. 1876; re-en. Sec. 295, p. 116, L. 1877; re-en. Sec. 295, 1st Div. Rev. Stat. 1879; re-en. Sec. 307, 1st Div. Comp. Stat. 1887; re-en. Sec. 1197, C. Civ. Proc. 1895; re-en. Sec. 6807, Rev. C. 1907; re-en. Sec. 9410, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 671.

Advisory Committee's Note

Subdivision (b) of Rule 41, M. R. App. Civ. P., eliminates the reference in section 93-5708 to judgment rolls, which are nowhere provided for in Montana Rules of Appellate Civil Procedure.

Amendments

The 1965 amendment substituted "the entry of the judgment in the judgment book" for "after filing the judgment roll" near the beginning of the section.

93-5710.1. Judgment or decree recorded before 1965 as notice of contents—certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, previous to the date this act takes effect, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 124, L. 1965.

Title of Act

An act to validate records of court proceedings containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered; and providing for a repealing clause.

Repealing Clause

Section 2 of Ch. 124, Laws 1965 repealed all acts and parts of acts in conflict therewith.

93-5710.2. Judgment or decree recorded before 1967 as notice of contents—certified copies as evidence. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1967, copied into the proper book, kept in the office of the clerk of the

district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 184, L. 1967.

Title of Act

An act to validate records of court proceedings prior to January 1, 1967, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.3. Validation of defective judgments or decrees affecting realty—1969 act. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1969, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 73, L. 1969.

Compiler's Notes

This act became effective July 1, 1969.

Title of Act

An act to validate records of court proceedings prior to January 1, 1969, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.4. Validation of defective judgments or decrees affecting realty—1971 act. Any judgment or decree of any court of this state

affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1971, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 94, L. 1971.

Title of Act.

An act to validate records of court proceedings prior to January 1, 1971, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

93-5710.5. Validation of defective judgments or decrees affecting realty —1973 act. Any judgment or decree of any court of this state affecting real property, provided that no action is now pending to set aside any such judgment or decree, which was, prior to January 1, 1973, copied into the proper book, kept in the office of the clerk of the district court, and certified copy of which judgment or decree was, previous to the date this act takes effect, recorded in the proper book, kept in the office of the county clerk and recorder, shall be deemed to impart, after that date, notice of its contents to subsequent purchasers and encumbrancers, notwithstanding any defect, omission, informality or irregularity in any of the court proceedings in the action in which such judgment or decree was entered and obtained, if time for appeal in the case has expired, and such judgment or decree shall not be deemed invalidated by reason of any such defect, omission, informality or irregularity; but nothing herein shall be deemed to affect the rights of purchasers or encumbrancers previous to that date. Duly certified copies of such judgment or decree, or of the record thereof, may be read in evidence, with like effect as copies of a judgment or decree duly and regularly obtained and recorded and entered.

History: En. Sec. 1, Ch. 146, L. 1973.

Title of Act

An act to validate records of court proceedings prior to January 1, 1973, containing defects, omissions, informalities or irregularities in obtaining a judgment or decree affecting real property, in which time for appeal has expired; providing that duly certified copies of such judgment or decree may be read in evidence with the same effect as judgments or decrees duly and regularly obtained, recorded and entered.

CHAPTER 58—THE EXECUTION

Section 93-5813.1. Waiver of exemptions prohibited in unsecured note.
93-5846. Validation of judicial sales before 1973.

93-5813.1. Waiver of exemptions prohibited in unsecured note. Any waiver of statutory exemption from execution in an unsecured promissory note shall be unenforceable.

History: En. Sec. 1, Ch. 172, L. 1965.

Title of Act

An act to prohibit waiver of statutory exemptions.

93-5816. (9429) Exemption of earnings—debts incurred for necessaries.

Waiver of Exemption

General waiver of statutory exemption in secured promissory note was not enforceable as against divorcee working to provide the necessities for herself and her children; a levy of execution could not be had on her wages. Anaconda Federal Credit Union, #4401 v. West, 157 M 175, 483 P 2d 909.

93-5824. (9432) Notice of sale—how given—copy of notice.

Sale of Real Property

District court ordering the restraining of a sale of real property on execution can determine if additional notice is required after the injunction is lifted if the initial notice requirements of this section have been met. Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 95.

93-5841. (9449) Possession of lands prior to foreclosure, etc.

Vendee of Mortgagee

Purchasers who took premises subject to pre-existing mortgage, and who had not assumed payment of mortgage, even though occupying premises as their home at time of foreclosure, were not "execution debtors" within meaning of statute and were not entitled to possession of premises during one-year period of redemption. First Nat. Bank of Circle v. Hastetter, 149 M 142, 423 P 2d 306.

93-5846. Validation of judicial sales before 1973. All judicial sales of real property prior to January 1, 1973, provided no action is now pending to set such sale aside, where made in this state on proceedings to satisfy valid judgments or decrees of any court and the moneys bidden thereon paid to the officer making such sale, shall be valid and sufficient in law to sustain a sheriff's deed based on such sale, and when no such deed has been executed, shall entitle such purchaser to such deed; and such deed, if now or when executed, shall be sufficient to convey all the title of judgment debtor at the time of such sale in the premises so sold to the purchaser at said sale, and all defects or irregularities in the issuance of execution, or the manner of making or conducting the sale, or in the recitals or references in such deed, shall be disregarded and such sale shall not be invalidated by reason of any such defect or irregularity.

History: En. Sec. 1, Ch. 80, L. 1973.

Compiler's Notes

Except for the date in the second line of text, the above section is identical with Sec. 1, Ch. 57, Laws of 1965, Sec. 1, Ch. 180, Laws of 1967, Sec. 1, Ch. 76, Laws of 1969 and Sec. 1, Ch. 97, Laws of 1971, previously compiled at this section. The compiler has therefore substituted the above section for the 1971 section.

Title of Act

An act relating to validation of judicial sales prior to January 1, 1973, of real property and curing defects or irregu-

larities in the issuance of execution, manner of making or conducting the sale, or in the recitals or references in sheriffs' deeds.

CHAPTER 60—FORECLOSURE OF MORTGAGES—ACTIONS FOR—SALES UNDER POWERS

93-6001. (9467) Proceedings in foreclosure suits.

Deficiency Judgment

The purpose of this section is to require the mortgagee to bring one foreclosure action to enforce "any right" protected by the mortgage. If the price bid in at foreclosure is insufficient to reimburse the mortgagee, a deficiency judgment may be entered against the mortgagor for the balance due and may be enforced by a lien upon the real property of the mortgagor only. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 482.

Tax Lien

Where, subsequent to purchase of tax certificates, mortgagee foreclosed the mortgage, the foreclosure sale cut off any lien asserted by mortgagee for taxes paid although the mortgage permitted mortgagee to pay taxes and collect the same upon foreclosure. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

A mortgagee who pays taxes on the mortgaged property prior to foreclosure does not acquire a distinct and separate lien on the property which survives the foreclosure sale. Stallings v. Erwin, 148 M 227, 419 P 2d 480, 483.

CHAPTER 61—NUISANCE, WASTE AND TRESPASS ON REAL PROPERTY—ACTIONS FOR

93-6101. (9474) Nuisance defined and actions for.

Baseball Park

"Pee wee" baseball league conducted on empty lot in residential district was not nuisance under statute, notwithstanding evidence that: field was brightly illuminated, crowds were noisy, traffic was heavy, field was dusty, some children used foul language, balls were hit into neighboring yards damaging lawns and flowers and games were played after 10 p.m.; nuisance, if any, was private and arose out of particular manner of operation of legitimate enterprise lower court should merely have entered decree calculated to eliminate injurious features. Kasala v. Kalispell Pee Wee Baseball League, 151 M 109, 439 P 2d 65, 32 ALR 3d 1120.

CHAPTER 62—QUIETING TITLE TO PROPERTY, REAL AND PERSONAL AND OTHER ACTIONS CONCERNING REAL ESTATE

93-6216. (9492) An order may be made to allow a party to survey, etc.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

93-6218. (9494) Petition for order—procedure.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

CHAPTER 63—PARTITION OF REAL ESTATE—ACTIONS FOR

93-6301. (9516) Who may bring actions for partition.

Separate Owners of Land and Building

Where land and building on land had separate owners, owner of building had no right to an order that the land and building be sold together and the proceeds apportioned between the owners, because the owners were not cotenants of the whole property but sole owners of parts of the property. Allman v. Stuart, 158 M 402, 492 P 2d 909.

93-6311. (9526) **Title of parties may be tried.**

Compiler's Notes

Sections 93-3101 to 93-3103, 93-3201 to 93-3203, 93-3301 to 93-3306, 93-3401, 93-3402, 93-3404, 93-3405, 93-3408, 93-3410 to 93-3412, 93-3415, 93-3501 to 93-3506, 93-3601 to 93-3604, 93-3701, 93-3801 to 93-3803, 93-3806 to 93-3808, 93-3811 to 93-3813, 93-3815 to 93-3820, 93-3901 to 93-3905, 93-3907, and 93-3909, contained in the reference to sections 93-3101 to 93-3910 in this section in the parent volume, were repealed by Sec. 84, Ch. 13, Laws 1961.

CHAPTER 64—QUO WARRANTO

93-6405. (9580) **When private person may commence action.**

Unqualified Appointee

Taxpayer was not entitled to an injunction in action questioning the qualifications of supervisor appointed by board of railway commissioners in proper exercise of their discretion. Steel v. Board of Railroad Commrs., 144 M 432, 397 P 2d 101.

CHAPTER 66—JUSTICES' COURTS—PLACE OF TRIAL OF ACTIONS

Section 93-6601. Where actions must be commenced.
93-6602. Place of trial may be changed in certain cases.

93-6601. (9619) **Where actions must be commenced.** Actions in justices' courts may be commenced, and, subject to the right to change the place of trial, as in this chapter provided, may be tried:

1. When the defendant, or all the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for the recovery of personal property, or the value thereof, or damages for taking or detaining the same; in the county in which the property, or any part thereof, may be found, or in which the property, or any part thereof, was taken, or in which the defendant or either of the defendants reside;

2. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for violation of an express or implied contract, or for money due on an express or implied contract, debt, note, or account; in the county in which such contract or obligation is to be or was to have been performed, or such money is to be or was to have been paid, or in which the defendant or either of the defendants resides; and the county in which the obligation is incurred shall be deemed to be the county in which it is to be performed or paid, unless there is a special contract to the contrary;

3. When the defendant, or all of the defendants, if there be more than one, reside in another county than that in which the right of action accrues, and the action be for damages for injury to person, property, or reputation; in the county where the injury was committed, or in which the defendant or either of the defendants reside;

4. When the defendant is a nonresident of the county; in any county where he may be found and served with summons personally;

5. When the defendant is a nonresident of the state; in any county of the state;

6. When the parties voluntarily appear and plead, without summons; in any county of the state;

7. In all other cases; in any county in which the defendant, or any one of the defendants, if there be more than one, reside, or may be found and served with summons personally.

History: En. Sec. 1480, C. Civ. Proc. 1895; amd. Sec. 1, p. 148, L. 1899; re-en. Sec. 6986, Rev. C. 1907; re-en. Sec. 9619, R. C. M. 1921; amd. Sec. 15, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 832.

Amendments

The 1973 amendment deleted "any township of" before references to the county in paragraphs 1 to 4 and 7; substituted "county" for "township" in paragraphs 5 and 6; and made minor changes in phraseology.

93-6602. (9620) **Place of trial may be changed in certain cases.** The court may, at any time before trial, on motion, change the place of trial in the following cases:

1. and 2. * * * [Same as parent volume.]

3. When a jury has been demanded, and either party makes and files an affidavit that he cannot have a fair and impartial trial, on account of the bias or prejudice of the citizens of the county, town, or city against him.

4. and 5. * * * [Same as parent volume.]

History: Ap. p. Sec. 594, p. 160, Bannack Stat.; re-en. Sec. 700, p. 176, Cod. Stat. 1871; re-en. Sec. 760, 1st Div. Rev. Stat. 1879; re-en. Sec. 780, 1st Div. Comp. Stat. 1887; en. Sec. 1481, C. Civ. Proc. 1895; re-en. Sec. 6987, Rev. C. 1907; re-en. Sec. 9620, R. C. M. 1921; amd. Sec. 16, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 833.

Amendments

The 1973 amendment substituted "county" for "township" near the end of paragraph 3.

CHAPTER 67—JUSTICES' COURTS—MANNER OF COMMENCING ACTIONS IN

Section 93-6706. Summons—how issued, directed and what to contain.
93-6711. Service of summons.

93-6706. (9631) **Summons—how issued, directed and what to contain.** The summons must be directed to the defendant and signed by the justice, and must contain:

1. The title of the court, the name of the county and city in which the action is commenced, and the names of the parties thereto;

2. and 3. * * * [Same as parent volume.]

History: Ap. p. 556, p. 152, Bannack Stat.; re-en. Sec. 662, p. 169, Cod. Stat. 1871; re-en. Sec. 722, 1st Div. Rev. Stat. 1879; re-en. Sec. 742, 1st Div. Comp. Stat. 1887; en. Sec. 1505, C. Civ. Proc. 1895; re-en. Sec. 6998, Rev. C. 1907; re-en. Sec. 9631, R. C. M. 1921; amd. Sec. 1, Ch. 91, L. 1939; amd. Sec. 17, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 844.

Amendments

The 1973 amendment deleted "or township" following "name of the county and city" in paragraph 1.

93-6711. (9636) **Service of summons.** The summons may be served by a sheriff or constable of any of the counties of this state; provided, that when a summons issued by a justice of the peace is to be served out of the county in which it was issued, the summons shall have attached to it a certificate under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the same was an acting

justice of the peace at the date of the summons; or the summons may be served by any male person resident in the state, over the age of eighteen (18) years, not a party to the suit, and must be served and returned as provided in Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9); or it may be served by publication, provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8), so far as they relate to publication of summons, are made applicable to justices' courts; the word "justice" being substituted for the word "clerk" whenever the latter word occurs.

History: En. Sec. 1510, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 61, L. 1903; re-en. Sec. 7003, Rev. C. 1907; re-en. Sec. 9636, R. C. M. 1921; amd. Sec. 1, Ch. 110, L. 1967. Cal. C. Civ. Proc. Sec. 850.

Amendments

The 1967 amendment substituted "Montana Rules of Civil Procedure, Rule 4D (2), (3), (4), (8), and (9)" for "sections 93-3006 and 93-3007" after "as provided in"; and substituted "provided in Montana Rules of Civil Procedure, Rule 4D (5) and (8)" for "and sections 93-3013, 93-3014 and 93-3015" after "by publication."

CHAPTER 68—JUSTICES' COURTS—PLEADINGS IN

Section 93-6802.1. Permissible pleadings enumerated.
93-6802.2. Demurrers and pleas abolished.

93-6802. (9639) Pleadings in justices' courts.

Compiler's Notes

This section appears to have been superseded by secs. 93-6802.1 and 93-6802.2.

93-6802.1. Permissible pleadings enumerated. In justice court there shall be a complaint and answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who is not an original party is brought into the action; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

History: En. Sec. 1, Ch. 168, L. 1967.

Title of Act

An act designating the pleadings to be allowed in justice court and designating the form thereof.

93-6802.2. Demurrers and pleas abolished. Demurrers, pleas and exceptions for insufficiency of a pleading shall not be used.

History: En. Sec. 2, Ch. 168, L. 1967.

Repealing Clause

Section 3 of Ch. 168, Laws 1967 repealed all acts and parts of acts in conflict therewith.

CHAPTER 69—JUSTICES' COURTS—PROVISIONAL REMEDIES—ARREST IN CIVIL ACTIONS—ATTACHMENT—CLAIM AND DELIVERY

Section 93-6903. A defendant arrested must be taken before the justice immediately.

93-6903. (9654) A defendant arrested must be taken before the justice immediately. The defendant, immediately upon being arrested, must be taken to the office of the justice who made the order, and if he is

absent or unable to try the action, or if it appears to him by the affidavit of defendant that he is a material witness in the action, the officer must immediately take the defendant before another justice of the county, if there is another, and if not, then before a justice of an adjoining county, who must take jurisdiction of the action, and proceed thereon as if the summons had been issued and the order of arrest made by him.

History: En. Sec. 562, p. 154, Bannack Stat.; re-en. Sec. 668, p. 171, Cod. Stat. 1871; re-en. Sec. 728, 1st Div. Rev. Stat. 1879; re-en. Sec. 748, 1st Div. Comp. Stat. 1887; amd. Sec. 1542, C. Civ. Proc. 1895; re-en. Sec. 7021, Rev. C. 1907; re-en. Sec. 9654, R. C. M. 1921; amd. Sec. 18, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 863.

Amendments

The 1973 amendment substituted "county" for "town, township, or city" in the middle of the section; and substituted "adjoining county" for "adjoining township" near the end of the section.

CHAPTER 73—JUSTICES' COURTS—JUDGMENT IN

Section 93-7302. Judgment of dismissal entered in certain cases without prejudice.
93-7311. Abstract of judgment.

93-7302. (9680) **Judgment of dismissal entered in certain cases without prejudice.** Judgment that the action be dismissed without prejudice to a new action, may be entered with costs in the following cases:

1. to 3. * * * [Same as parent volume.]

4. When it is objected at the trial, and appears by the evidence, that the action is brought in the wrong county; but if the objection is taken and overruled, it is the cause of a reversal on appeal, and does not otherwise invalidate the judgment; if not taken at the trial, it is waived.

History: Ap. p. Sec. 612, p. 164, Bannack Stat.; re-en. Sec. 718, p. 179, Cod. Stat. 1871; re-en. Sec. 778, 1st Div. Rev. Stat. 1879; re-en. Sec. 798, 1st Div. Comp. Stat. 1887; amd. Sec. 1624, C. Civ. Proc. 1895; re-en. Sec. 7050, Rev. C. 1907; re-en. Sec. 9683, R. C. M. 1921; amd. Sec. 2, Ch. 34, L. 1937; amd. Sec. 19, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 890.

Amendments

The 1973 amendment deleted "or township, town, or city" immediately preceding the first semicolon in paragraph 4.

93-7311. (9689) **Abstract of judgment.** The justice, on the demand of a party in whose favor judgment is rendered, must give him an abstract of the judgment in substantially the following form (filling blanks according to the facts):

"State of Montana

County of _____

_____, plaintiff, v. _____, defendant.

In justice's court, before _____, justice of the peace, _____ county, _____, 19__ (inserting date of abstract). Judgment entered for plaintiff (or defendant) for $_____, on the _____ day of _____. I certify that the foregoing is a correct abstract of a judgment rendered in said action in my court, or (as the case may be) in the court of _____, justice of the peace, as it appears by his docket, now in my possession, as his successor in office.

_____, Justice of the Peace.

History: Ap. p. Sec. 614, p. 164, Bannack Stat.; re-en. Sec. 720, p. 180, Cod. Stat. 1871; amd. Sec. 1, p. 38, L. 1876; re-en. Sec. 780, p. 184, 1st Div. Rev. Stat. 1879; re-en. Sec. 800, 1st Div. Comp. Stat. 1887; en. Sec. 7056, Rev. C. 1907; re-en. Sec. 9689, R. C. M. 1921; amd. Sec. 20, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 897.

Amendments

The 1973 amendment substituted "county" for "township (city or town)" in the caption of the abstract.

CHAPTER 74—JUSTICES' COURTS—EXECUTION FROM

Section 93-7402. Form of execution.

93-7402. (9694) **Form of execution.** The execution must be directed to the sheriff or to a constable of the county, and must be subscribed by the justice and bear date the day of its issuance. It must intelligibly refer to the judgment, by stating the names of the parties, and the name of the justice before whom, and of the county where, and the time when, it was rendered; the amount of the judgment, if it be for money; and if less than the whole is due, the true amount due thereon. It must contain, in like cases, similar directions to the sheriff or constable as are required by the provisions of sections 93-5801 to 93-5845, in an execution to the sheriff, except that it shall not direct the officer to in any manner levy upon or satisfy the judgment, or any interest thereon, from any real property.

History: En. Sec. 616, p. 165, Bannack Stat.; amd. Sec. 722, p. 181, Cod. Stat. 1871; re-en. Sec. 782, 1st Div. Rev. Stat. 1879; re-en. Sec. 802, 1st Div. Comp. Stat. 1887; amd. Sec. 1641, C. Civ. Proc. 1895; amd. Sec. 1641, p. 243, L. 1897; re-en. Sec. 7061, Rev. C. 1907; re-en. Sec. 9694, R. C. M. 1921; amd. Sec. 21, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 902.

Amendments

The 1973 amendment deleted "and the township, town, or city" following "and of the county" in the second sentence.

CHAPTER 76—JUSTICES' COURTS—DOCKETS

Section 93-7605. Proceedings when office becomes vacant and before a successor is appointed.

93-7605. (9707) **Proceedings when office becomes vacant and before a successor is appointed.** If the office of a justice become vacant by his death or removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in possession of such justice must be deposited in the office of some other justice in the county, to be by him delivered to the successor of such justice. If there is no other justice in the county, then the docket and papers of such justice must be deposited in the office of the county clerk, to be by him delivered to the successor in office of the justice.

History: En. Sec. 1664, C. Civ. Proc. 1895; re-en. Sec. 7074, Rev. C. 1907; re-en. Sec. 9707, R. C. M. 1921; amd. Sec. 22, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 915.

Amendments

The 1973 amendment substituted "county" for "township, town, or city," near the beginning of the first sentence; and substituted "county" for "township" near the end of the first sentence and near the beginning of the second sentence.

93-7607. (9709) **Justice elected to fill vacancy.** The justice elected to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the same or another person elected to take office in the same county from that time is the successor.

History: En. Sec. 1666, C. Civ. Proc. 1895; re-en. Sec. 7076, Rev. C. 1907; re-en. Sec. 9709, R. C. M. 1921; amd. Sec. 23, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 917.

Amendments

The 1973 amendment substituted "county" for "township, town, or city" near the end of the section.

CHAPTER 77—JUSTICES' COURTS—GENERAL PROVISIONS

Section 93-7704. In case of disability of justice, another justice may attend on his behalf.
93-7709. Special constables—appointment.
93-7712. Depositions—how taken.

93-7704. (9714) **In case of disability of justice, another justice may attend on his behalf.** In case of the sickness or other disability, or necessary absence of a justice, on a return of a summons, or at the time appointed for a trial, another justice of the same county, or adjoining county may, at his request, attend in his behalf, and thereupon is vested with the power, for the time being, of the justice before whom the summons was returnable. In that case, the proper entry of the proceedings before the attending justice, subscribed by him, must be made in the docket of the justice before whom the summons was returnable. If the case is adjourned, the justice before whom the summons was returnable may resume jurisdiction.

History: En. Sec. 626, p. 168, Bannack Stat.; re-en. Sec. 732, p. 184, Cod. Stat. 1871; re-en. Sec. 792, 1st Div. Rev. Stat. 1879; re-en. Sec. 812, 1st Div. Comp. Stat. 1887; amd. Sec. 1683, C. Civ. Proc. 1895; re-en. Sec. 7081, Rev. C. 1907; re-en. Sec. 9714, R. C. M. 1921; amd. Sec. 24, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 992.

Amendments

The 1973 amendment substituted "county, or adjoining county" for "township, town, or city, or adjoining township" in the middle of the first sentence.

93-7709. (9719) **Special constables—appointment.** If in any township there should be no duly elected, appointed, or qualified constable, but not otherwise, a justice of the peace in the county may, at the request of a party, after being satisfied that it is expedient to do so, specially depute any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant, or with or without a writ of attachment, or to serve an execution. The justice shall be liable upon his official bond for all official acts of the person so deputed. Such deputation shall be in writing made on the process, and a note thereof made on the justice's docket.

History: En. Sec. 627, p. 168, Bannack Stat.; re-en. Sec. 733, p. 184, Cod. Stat. 1871; re-en. Sec. 793, p. 187, 1st Div. Rev. Stat. 1879; re-en. Sec. 813, 1st Div. Comp. Stat. 1887; amd. Sec. 1688, C. Civ. Proc. 1895; amd. Sec. 1, p. 138, L. 1899; re-en. Sec. 7086, Rev. C. 1907; re-en. Sec. 9719, R. C. M. 1921; amd. Sec. 25, Ch. 491, L. 1973.

Amendments

The 1973 amendment substituted "in the county" for "in such township" after "justice of the peace" in the first sentence.

93-7712. (9722) **Depositions—how taken.** Depositions to be used in justices' courts shall be taken as provided in Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure.

History: En. Sec. 1691, C. Civ. Proc. 1895; re-en. Sec. 7089, Rev. C. 1907; re-en. Sec. 9722, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1967.

Amendments

The 1967 amendment substituted "shall" for "may" after "justices' courts"; and substituted "Rules 26 and 28 to 32, inclusive of the Montana Rules of Civil Procedure" for "sections 93-1801-1 to 93-1801-6."

CHAPTER 79—JUSTICES' COURTS—APPEALS FROM, TO DISTRICT COURTS

93-7907. (9760) **Procedure on appeal, etc.**

Dismissal of Appeal

Where defendant filed notice of appeal of adverse verdict in justice court with an undertaking on May 8, 1969 but took no further action, district court properly granted plaintiff's motion to dismiss for unnecessary delay on July 1, 1970, since it was appellant's burden as moving party to bring appeal on for hearing. Eide Ins. v. Correll, 156 M 167, 478 P 2d 272.

CHAPTER 80—SUPREME COURT—APPEALS TO

Section 93-8001. How judgments and orders may be reviewed.
93-8002. Party aggrieved may appeal—names of parties.
93-8013. Deposit in lieu of undertaking.

93-8001. (9729) **How judgments and orders may be reviewed.** A judgment or order in a civil action, except when expressly made final by this code, may be reviewed as prescribed in sections 93-7901 to 93-7908, and by the Rules of Appellate Civil Procedure, and not otherwise.

History: En. Sec. 248, p. 94, Bannack Stat.; re-en. Sec. 317, p. 199, L. 1867; re-en. Sec. 366, p. 107, Cod. Stat. 1871; re-en. Sec. 405, p. 149, L. 1877; re-en. Sec. 405, 1st Div. Rev. Stat. 1879; re-en. Sec. 418, 1st Div. Comp. Stat. 1887; re-en. Sec. 1720, C. Civ. Proc. 1895; re-en. Sec. 7096, Rev. C. 1907; re-en. Sec. 9729, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 936.

Advisory Committee's Note

Subdivisions (c), (d), (e) of Rule 41, M. R. App. Civ. P. amend this section, and sections 93-8002 and 93-8013 which contain references to appeals from justices' courts to district courts, so as to preserve the existing procedure applicable to such appeals.

Amendments

The 1965 amendment substituted "by the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" after "93-7908 and" and made a minor change in punctuation.

93-8002. (9730) **Party aggrieved may appeal—names of parties.** A party aggrieved may appeal in the cases prescribed in sections 93-7901 to 93-7908 and the Rules of Appellate Civil Procedure.

History: En. Sec. 248, p. 94, Bannack Stat.; amd. Sec. 319, p. 199, L. 1867; re-en. Sec. 368, p. 107, Cod. Stat. 1871; re-en. Sec. 407, p. 150, L. 1877; re-en. Sec. 407, 1st Div. Rev. Stat. 1879; re-en. Sec. 420, 1st Div. Comp. Stat. 1887; re-en. Sec. 1721, C. Civ. Proc. 1895; re-en. Sec. 7097, Rev. C. 1907; re-en. Sec. 9730, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 938.

Amendments

The 1965 amendment substituted "the Rules of Appellate Civil Procedure" for "93-8001 to 93-8023" at the end of the present section and omitted a former second sentence which read: "The party appealing is known as the appellant, and the adverse party as the respondent."

93-8003 to 93-8006. (9731 to 9734) **Superseded — M. R. App. Civ. P., Rules 1 and 4 to 6.**

Supersession

These sections (Ap. p. Secs. 251, 252, 262, pp. 95, 97, Bannack Stat.; Secs. 320, 331, pp. 199, 201, L. 1867; Secs. 408 to 410, 431, pp. 150, 151, 157, L. 1877; Sec. 1, pp. 146, 147, L. 1899; Secs. 10, 11, Ch. 225, L. 1921; Sec. 1, Ch. 39, L. 1925; Sec. 1, Ch. 41, L. 1941), relating to appealable judgments and orders, the taking of an appeal and the time therefor, and the undertaking or deposit on appeal, are superseded by M. R. App. Civ. P., Rules 1 and 4 to 6.

93-8011, 93-8012. (9739, 9740) **Superseded—M. R. App. Civ. P., Rules 6 and 7.**

Supersession

These sections (Ap. p. Secs. 268, 269, p. 99; Sec. 337, p. 202, L. 1867; Sec. 415, p. 152, L. 1877), relating to stay of proceedings and undertaking on appeal, are superseded by M. R. App. Civ. P., Rules 6 and 7.

93-8013. (9741) **Deposit in lieu of undertaking.** In all cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and in all such cases the undertaking or deposit may be waived by the written consent of the respondent.

History: En. Sec. 388, p. 112, Cod. Stat. 1871; re-en. Sec. 417, p. 153, L. 1877; re-en. Sec. 417, 1st Div. Rev. Stat. 1879; re-en. Sec. 430, 1st Div. Comp. Stat. 1887; amd. Sec. 1732, C. Civ. Proc. 1895; re-en. Sec. 7108, Rev. C. 1907; re-en. Sec. 9741, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 948.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

93-8014 to 93-8025. (9742 to 9753) **Superseded—M. R. App. Civ. P.**

Supersession

These sections (Secs. 260, 271, 273, pp. 96, 99, 100, Bannack Stat.; Sec. 342, p. 204, L. 1867; Secs. 418, 426 to 428, pp. 153, 156, L. 1877; Secs. 1733 to 1735, 1737, 1739 to 1744, C. Civ. Proc. 1895; Sec. 2, Ch. 35, L. 1907; Sec. 3, Ch. 42, L. 1907; Sec. 1, Ch. 47, L. 1909; Secs. 12 to 14, Ch. 225, L. 1921; Sec. 1, Ch. 19, L. 1925; Sec. 1, Ch. 87, L. 1929), relating to appeals from district courts, are superseded by the Rules of Appellate Civil Procedure. For designation of superseding rule see M. R. App. Civ. P., Table B.

CHAPTER 86—COSTS AND DISBURSEMENTS—COST BILL—SUIT IN FORMA PAUPERIS

Section 93-8601.1. Contractual right to attorney fees to be reciprocal.
93-8625. Poor person may sue or defend without costs.

93-8601.1. Contractual right to attorney fees to be reciprocal. Whenever by virtue of the provisions of any contract or obligation in the nature of a contract, made and entered into at any time after the effective date of this act, one party to such contract or obligation has

an express right to recover attorney fees from any other party to the contract or obligation in the event the party having that right shall bring an action upon the contract or obligation, then in any action on such contract or obligation all parties to the contract or obligation shall be deemed to have the same right to recover attorney fees, and the prevailing party in any such action, whether by virtue of the express contractual right, or by virtue of this act, shall be entitled to recover his reasonable attorney fees from the losing party or parties.

History: En. Sec. 1, Ch. 259, L. 1971.

Title of Act

An act to extend a contractual right to attorney fees granted to one party to a contract to the prevailing party in any lawsuit on such contract whether or not the contract expressly provides for such fees as to such prevailing party.

93-8602. (9787) When allowed, of course, to the plaintiff.

Attorney's Fees

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under section 93-8613 since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

93-8605. (9790) When the several defendants are not united, etc.

References

State ex rel. Gage v. District Court, 148 M 284, 419 P 2d 746, 748.

93-8606. (9791) Costs of appeal discretionary with the court, etc.

References

Stalcup v. Montana Trailer Sales & Equipment Co., 146 M 494, 409 P 2d 542.

93-8613. (9798) Counsel fees on foreclosure.

Intervenor

Where party intervened in action to foreclose mortgage in an effort to have title quieted in his behalf as against both mortgagee and mortgagor, it was error to award intervenor judgment for attorney's fees under this section since intervenor qualified as neither mortgagee bringing foreclosure action nor as possible successful mortgagor defending such action. Nikles v. Barnes, 153 M 113, 454 P 2d 608.

Priority of Claim

On foreclosure of mortgage, federal tax lien took priority over attorney's fees allowed under this section since attorney's lien failed to meet "choate" test at the time the amount of federal taxes owed on the property was fixed. First Nat. Bank of Lewistown v. Tilzey, 238 F Supp 750.

93-8618. (9802) What are costs and disbursements.

Attorney Fees

Attorney fees are not included as costs under this section, so that if such costs are not allowed under section 21-137, which requires showing by motion that wife cannot take an appeal without the allowance, she is not entitled to them on execution under section 93-8621. State ex rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

Deposition Expenses

Cost to defendant of taking plaintiff's depositions for convenience of defendant's counsel could not be included in bill of costs where never filed with the court and plaintiff had no practical means of securing a copy; it was obviously a discovery deposition for defendant's own benefit. Johnson v. Furgeson, 158 M 170, 489 P 2d 1032.

References

Kintner v. Harr, 146 M 461, 408 P 2d 487; State ex rel. Ald, Inc. v. District Court, 147 M 221, 410 P 2d 944.

93-8621. (9805) **Costs on appeal—how claimed.**

Execution Void

In divorce proceeding, inclusion in memorandum of both allowable statutory costs under section 21-137 and attorney's fee, to which the wife was not entitled because of failure to file motion on appeal, constituted noncompliance with this section and made the execution void. State ex rel. Sowerwine v. District Court, 145 M 375, 401 P 2d 568.

References

State ex rel. Ald, Inc. v. District Court, 147 M 221, 410 P 2d 944.

93-8625. (9809) **Poor person may sue or defend without costs.** Any person may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state who will file an affidavit stating that he has a good cause of action or defense, that he is unable to pay the costs, or procure security to secure the same; then it is hereby made the duty of the officers of the courts and administrative tribunals to issue all writs and serve the same, and perform all services in the action, without demanding or receiving their fees in advance.

History: En. Sec. 2, p. 71, L. 1869; re-en. Sec. 563, p. 150, Cod. Stat. 1871; amd. Sec. 1, p. 40, Ex. L. 1873; amd. Sec. 503, p. 173, L. 1877; re-en. Sec. 503, 1st Div. Rev. Stat. 1879; re-en. Sec. 516, 1st Div. Comp. Stat. 1887; re-en. Sec. 1873, C. Civ. Proc. 1895; re-en. Sec. 7176, Rev. C. 1907; re-en. Sec. 9809, R. C. M. 1921; amd. Sec. 1, Ch. 71, L. 1971; amd. Sec. 1, Ch. 90, L. 1973.

Preamble

Chapter 90 of Laws 1973 contained a preamble which read: "WHEREAS, section 93-8625, R. C. M. 1947, gives the right to sue or defend in any of the courts of this state to poor persons without costs, amendment should be made to remove any ambiguity as to whether this would also include administrative tribunals."

Amendments

The 1971 amendment inserted "or defend" and "or defense."

The 1973 amendment inserted "and administrative tribunals" in two places.

CHAPTER 89—UNIFORM DECLARATORY JUDGMENTS ACT

93-8901. (9835.1) **Scope.**

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Declaratory Judgments Act: Oklahoma and Virginia.

Supreme Court

Supreme court could accept original jurisdiction in suit for declaratory judgment where statute which taxed nonresident contractors indiscriminately was declared unconstitutional, since supreme court was a court of record and under its own rules could accept original jurisdiction in emergency situations. State ex rel. Schultz-Lindsay Constr. Co. v. State Board of Equalization, 145 M 380, 403 P 2d 635.

Supreme court could entertain original action for declaratory judgment on calling, election of delegates to and implementation of constitutional convention required by vote of the electors in view of necessity for legislature to act within 60-day session then in progress. Forty-Second Legislative Assembly v. Lennon, 156 M 416, 481 P 2d 330.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings took arbitrary action, mandamus was proper to compel council to terminate the process. This chapter did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

93-8906. (9835.6) **Discretionary.**

Discretion of Court

In absence of showing of abuse of discretion, refusal of lower court to rule on issue for reason that decree would not terminate controversy or remove uncertainty will not be reversed. Helena Valley

Irrig. Dist. v. State Highway Commission, 150 M 192, 433 P 2d 791.

Dismissal of Action

Court did not abuse its discretion in dismissing insurance company's action for declaratory judgment that defendant's policy was void because obtained by fraud, since, under section 93-8911, there were possible parties not joined, defendant having been in an accident several months prior to expiration of the policy, and under this section, court could refuse to enter the judgment on the basis that it would not terminate the controversy as to all parties. Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

93-8909. (9835.9) Jury trial.

References

Mahan v. Hardland, 147 M 78, 410 P 2d 156.

93-8911. (9835.11) Parties.

Dismissal of Action

Court could take into account this section in refusing to grant declaratory judgment in favor of insurance company which claimed that defendant's policy was void when accident in which he was involved occurred because there were other parties not joined and therefore the declaratory judgment would not terminate the controversy should other parties sue defendant. Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

93-8912. (9835.12) Construction.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713.

CHAPTER 90—CERTIORARI (WRIT OF REVIEW)

93-9002. (9837) When and by what courts granted.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

93-9008. (9843) The review under the writ, extent of.

References

Mailey v. Board of County Commrs., 142 M 505, 385 P 2d 74.

CHAPTER 91—MANDAMUS (WRIT OF MANDATE)

93-9102. (9848) When and by what court issued.

Clear Legal Duty

Board of county commissioners was properly denied writ of mandate requiring sheriff to provide detailed itemized accounting of county funds received for furnishing board to prisoners of county jail since sheriff has no clear legal duty to provide such an accounting. State ex rel. Lucier v. Murphy, 156 M 186, 478 P 2d 273 (Decision prior to 1971 amendment of section 16-2818).

Discretionary Actions

Mandamus lies only to compel performance of an act, not to correct action already done, so that where state board of land commissioners exercised discretion in awarding lease of land to lowest bidder, mandamus was not the proper writ to pursue in seeking a remedy. State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

Trial court properly denied writ of mandate, sought pursuant to this section,

to require city to condemn private lands for use as public streets, since this section provides for performance of ministerial duty and not duty or power that requires exercise of discretion. State ex rel. Wiedman v. City of Kalispell, 154 M 31, 459 P 2d 694.

Termination of Annexation Proceedings

Where a majority of the resident freeholders of a first class city validly protested proposed annexation under section 11-403 (1), but city council instead of terminating the annexation proceedings, took arbitrary action, mandamus was proper to compel council to terminate the process. The Uniform Declaratory Judgments Act (93-8901 to 93-8916) did not furnish the protestants a plain, speedy and adequate remedy. State ex rel. Konen v. City of Butte, 144 M 95, 394 P 2d 753, 757.

93-9103. (9849) Writ—when and upon what to issue.

Appealable Matters

Engineer seeking registration from state board had no right to a writ of mandamus where discretion of the board was subject to review under section 66-2345. Heldenbrand v. Montana State Board of Registration for Professional Engineers and Land Surveyors, 147 M 271, 411 P 2d 744.

93-9109. (9855) Motion for new trial—where made.

Motion Not Required

This section does not require motion for new trial in order to appeal from a grant of mandamus, but merely sets out the place of filing for a motion for new trial. State ex rel. Bennett v. Dowdall, 157 M 11, 482 P 2d 572.

93-9112. (9858) Damages, costs and peremptory mandate, etc.

Damages Incidental to Pleading

After repeated refusals by county to follow assessment procedures prescribed by state board of equalization, and after other delays and hindrances by the county, including the filing of sham pleadings, Supreme Court will, if there is further delay in complying with writ of mandamus, consider assessing costs and damages under this section. State ex rel. State Board of Equalization v. Price, 157 M 134, 483 P 2d 284.

References

State ex rel. Thompson v. Babcock, 147 M 46, 409 P 2d 808.

CHAPTER 92—PROHIBITION—WRIT OF

93-9201. (9861) Prohibition defined.

Judicial Error Required

Writ of prohibition was issued, pursuant to this section, where district court had acted beyond its jurisdiction by enjoining board of equalization from revising grading and valuation on nonirrigated farm land pursuant to section 84-429.7 et seq. State ex rel. Lord v. District Court, 154 M 269, 463 P 2d 323.

Municipal Corporation

Lower court properly refused petition for writ of prohibition against city acting within jurisdiction since writ lies only when municipal corporation acts without or in excess of jurisdiction. State ex rel. Pat Griffin Co. v. City of Butte, 151 M 546, 445 P 2d 739.

Public Service Commission

Since federal price-freeze order did not prevent rate hearings by the public service commission, though it did prevent putting increases into effect, commission had jurisdiction to hold hearings and writ of prohibition was improper. State ex rel. Department of Public Service Regulation v. District Court, 158 M 88, 488 P 2d 1147.

References

State ex rel. Belwin, Inc. v. Davison, 148 M 345, 420 P 2d 842, 844.

CHAPTER 97—FORCIBLE ENTRY AND UNLAWFUL DETAINER—ACTIONS FOR

Section 93-9705. What courts have jurisdiction.

93-9703. (9889) Unlawful detainer defined.

Agricultural Tenant Holding Over

Statute gives agricultural tenant right to hold over for no other purpose than to harvest crops and protect investment and

does not mean that tenant can exercise option to purchase contained in expired lease. Miller v. Meredith, 149 M 125, 423 P 2d 595.

Landlord-tenant Relationship Required

An action for unlawful detainer can succeed only where the relation of landlord-tenant exists. Kransky v. Hensleigh, 146 M 486, 409 P 2d 537.

Unlawful Ejectment

In case of unlawful ejectment, plaintiff, who had farmed land for three years, paying one third of each crop as rent, was not a sharecropper but a tenant with an interest in the land for a term and it was proper for the judge to instruct the jury that if plaintiff held without notice to quit more than sixty days after expiration of his term he was deemed to be holding by permission of the defendant-landlords and not guilty of unlawful detainer. Kenfield v. Curry, 145 M 174, 399 P 2d 999.

93-9705. (9891) **What courts have jurisdiction.** The district court of the county in which the property, or some part of it, is situated, shall have jurisdiction of proceedings under this chapter; provided, that justices' courts, within their respective counties, shall have concurrent jurisdiction.

History: En. Sec. 2084, C. Civ. Proc. 1895; re-en. Sec. 7273, Rev. C. 1907; re-en. Sec. 9891, R. C. M. 1921; amd. Sec. 26, Ch. 491, L. 1973. Cal. C. Civ. Proc. Sec. 1163.

Amendments

The 1973 amendment substituted "counties" for "towns, townships, or cities" near the end of the section.

Repealing Clause

Section 27 of Ch. 491, Laws 1973 read "Sections 25-303, 25-305, and 25-306, R. C. M. 1947, are repealed."

CHAPTER 98—CONTEMPTS

93-9801. (9908) **What acts or omissions are contempts.**

Criticism of Decisions

Bank president's statement that he was displeased with jury verdict against bank and that jurors could not expect to do business with bank did not constitute contempt under subsection 9, since jurors did continue to do business with bank and since statement came twenty-two days after final disposition of case and could not have interfered with court proceedings. State ex rel. Polish v. District Court Third Judicial District in and for County of Powell, 156 M 220, 478 P 2d 270.

References

Weinheimer v. Scott, 143 M 243, 388 P 2d 790.

93-9803. (9910) **A contempt committed in the presence of the court, etc.**

Recital of Facts in Order

Order of contempt that failed to specify facts that constituted contempt before the court was deficient under this section, since it did not provide opportunity for appellate review. State ex rel. Shea v. District Court, 156 M 266, 479 P 2d 281.

93-9810. (9917) **Judgment and penalty, if guilty.**

Excessive Penalty

District court's sentence of ten days' imprisonment for contempt exceeded jurisdiction of such court as vested in it by this section. Fuchs v. District Court, 153 M 485, 458 P 2d 776.

CHAPTER 99—EMINENT DOMAIN

Section 93-9902. What are public uses.
93-9902.1. Policy on surface mining or open pit mining of coal.
93-9905. Facts necessary to be found before condemnation.
93-9908. The complaint and its contents.

93-9912. Appointment and meeting of commissioners.
93-9913. The date with respect to which compensation shall be assessed.
93-9921.1. Necessary expenses of litigation.
93-9927. Relocation assistance—purpose of act.
93-9928. Definition of terms in relocation assistance law.
93-9929. Payments to displaced persons—moving expense allowance—business losses.
93-9930. Additional payments for displacement from dwelling owned by occupant.
93-9931. Additional payments for displacement from rented dwelling.
93-9932. Relocation advisory services.
93-9933. Assurance of availability of suitable replacement dwellings.
93-9934. Relocation costs included in project costs—replacement housing.
93-9935. Public assistance eligibility unimpaired—tax exemption of payments.
93-9936. Appeal to district court from administrative determination.
93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings.
93-9938. Advancement of closing costs and taxes incurred by owner.
93-9939. Reimbursement of costs when condemnation proceedings abandoned.
93-9940. Expenses included in inverse condemnation judgment or settlement.
93-9941. Acquisition of buildings and improvements affected—payments to tenant.
93-9942. Duplication of eminent domain payments not intended.
93-9943. New rights and powers not created.
93-9944. Application to all federally assisted programs.

93-9902. (9934) **What are public uses.** Subject to the provisions of this chapter, the right of eminent domain may be exercised in behalf of the following public uses:

1. to 14. * * * [Same as parent volume.]

15. To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others; provided, however, the use of the surface for strip mining or open pit mining of coal (i.e., any mining method or process in which the strata or overburden is removed or displaced in order to extract the coal) is not a public use and eminent domain may not be exercised for this purpose.

History: En. Sec. 580, p. 189, L. 1877; re-en. Sec. 580, 1st Div. Rev. Stat. 1879; re-en. Sec. 598, 1st Div. Rev. Stat. 1887; amd. Sec. 2211, C. Civ. Proc. 1895; amd. Sec. 1, p. 135, L. 1899; amd. Sec. 1, Ch. 4, L. 1907; Sec. 7331, Rev. C. 1907; re-en. Sec. 9934, R. C. M. 1921; amd. Sec. 1, Ch. 245, L. 1953; amd. Sec. 6, Ch. 259, L. 1955; amd. Sec. 1, Ch. 216, L. 1961; amd. Sec. 1, Ch. 311, L. 1973. Cal. C. Civ. Proc. Sec. 1238.

Amendments

The 1973 amendment added the proviso to subdivision 15.

Electric Power

Legislature has specifically declared that an electric power line is public use for which private property may be taken by eminent domain proceedings under this section, and public use is not confined to actual use by public, but is measured in terms of right of public to use proposed facilities for which condemnation is sought. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

93-9902.1. Policy on surface mining or open pit mining of coal. For the following reasons the state's power of eminent domain may not be exercised to mine and extract coal owned by the plaintiff located beneath the surface of property where the title to the surface is vested in others:

(1) Because of the large reserves of and the renewed interest in coal in eastern Montana, coal development is potentially more destructive to land and watercourses and underground aquifers and potentially more extensive geographically than the foreseeable development of other ores, metals, or minerals, and affecting large areas of land and large numbers of people;

(2) That in many areas of Montana set forth in (a) hereinabove, the title to the surface is vested in an owner other than the mineral owner, and that the surface owner is putting that surface to a productive use, and it is the public policy of the state to encourage and foster such productive use by such owner, and that to permit the mineral owner to condemn the surface owner is to deprive the surface owner of the right to use his property in a productive manner as he determines, and is also contrary to public policy as set forth in paragraph four (4) herein below;

(3) The magnitude of the potential coal development in eastern Montana will subject landowners to undue harassment by excessive use of eminent domain;

(4) That it is the public policy of the state to encourage and foster diversity of land ownership and that the surface mining of coal and control of large areas of land by the surface coal mining industry would not foster public policy and further the public interest.

History: En. 93-9902.1 by Sec. 2, Ch. 311, L. 1973.

Title of Act

An act amending section 93-9902, R. C. M. 1947, to declare that the extraction of coal by strip mining or open pit mining is not a public use; and setting forth the public policy therefor.

93-9904. (9936) Private property defined—classes enumerated.

Discretionary Actions

Action brought to compel state highway commission to construct two interchanges on new interstate highway near town, instead of one interchange as planned, was improperly brought under this section since this section pertains to eminent domain proceedings and issues presented by action were matters of administrative law under section 32-2406. Erie v. State ex rel. State Highway Commission, 154 M 150, 461 P 2d 207, distinguished in 155 M 39, 47, 466 P 2d 594.

Judicial Review

In condemnation proceeding involving access to portion of farm divided by interstate highway, district court had power to require state to incorporate in its construction plans such structures as would allow two-lane access across county road where access road benefited general public as well as private property owner; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. State ex rel. State Highway Commission v. Lavoie, 155 M 39, 466 P 2d 594, explained in — M —, 496 P 2d 1140, 1143.

More Necessary Public Use

Requirement under section 93-9906 that taking of private property by condemnation proceedings must be compatible with greatest public good and least private injury applies specifically to easements and rights of way under this section. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

Public property held by city and taken by state for more necessary public use should be taken and compensated as if it had been taken from a private owner. City of Three Forks v. State Highway Commission, 156 M 392, 480 P 2d 826.

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the

highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 496.

93-9905. (9937) **Facts necessary to be found before condemnation.** 1 and 2. * * * [Same as parent volume.]

3. If already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. The plaintiff or defendant, or any party interested in the proceedings, can appeal to the supreme court from any finding or judgment made or rendered under this chapter, as in other cases. Such appeal does not stay any further proceedings under this chapter, except that the district court on motion or ex parte may grant a stay for such period of time and under such conditions as the court deems proper.

History: En. Sec. 583, p. 191, L. 1877; re-en. Sec. 583, 1st Div. Rev. Stat. 1879; re-en. Sec. 601, 1st Div. Comp. Stat. 1887; amd. Sec. 2214, C. Civ. Proc. 1895; re-en. Sec. 7334, Rev. C. 1907; re-en. Sec. 9937, R. C. M. 1921; amd. Sup. Ct. Ord. 11020, eff. January 1, 1966. Cal. C. Civ. Proc. Sec. 1241.

Advisory Committee's Note

Subdivision (f) Rule 41, M. R. App. Civ. P., amends the provision of subdivision 3 of this section to permit the district court to stay proceedings on appeals in eminent domain cases, as is permitted by Rule 7(a) of these rules in other cases. See Tables A, B, C, M. R. App. Civ. P. for reference to other amendments.

Amendments

The 1965 amendment added the exception at the end of the section.

Burden of Proof

Where commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion or arbitrary action in order to defeat the commission's action, while the commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway and that their decision appeared to be compatible with the greatest public good and least private injury on the basis of conflicting evidence. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in 155 M 39, 47, 466 P 2d 594.

Condemnor's Discretion

Highway commission did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283, distinguished in State Highway Commission v. Danielsen, 146 M 539, 409 P 2d 443; 155 M 39, 47, 466 P 2d 594.

Necessity of Use

The word "necessary" as used in this section does not mean that the property must be indispensable to the proposed project, but that it must be reasonably requisite and proper for the accomplishment of the purpose for which it is sought under the peculiar circumstances of each case. State Highway Commission v. Crossen-Nissen Co., 145 M 251, 400 P 2d 283.

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

References

State Highway Commission v. Danielsen, 146 M 539, 409 P 2d 443.

93-9906. (9938) **Parties may make location—may enter, etc.**

Compatible with Public Good

Where power company had studied alternate routes for power lines, surveyed surrounding area and determined that best possible route for such line was across defendant's property, utility had complied with this section in that taking of private property was compatible with

greatest public good and least private injury. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

References

State Highway Commission v. Danielsen, 146 M 539, 409 P 2d 443.

93-9908. (9940) **The complaint and its contents.** The complaint must contain:

1. * * * [Same as parent volume.]

2. The names of all owners, mortgagees and lien holders of record and any other claimants of the property of record, if known, or a statement that they are unknown, who must be styled defendants.

3. to 6. * * * [Same as parent volume.]

History: En. Sec. 586, p. 192, L. 1877; re-en. Sec. 586, 1st Div. Rev. Stat. 1879; re-en. Sec. 604, 1st Div. Comp. Stat. 1887; amd. Sec. 2217, C. Civ. Proc. 1895; re-en. Sec. 7337, Rev. C. 1907; re-en. Sec. 9940, R. C. M. 1921; amd. Sec. 3, Ch. 245, L. 1953; amd. Sec. 8, Ch. 259, L. 1955; amd. Sec. 1, Ch. 197, L. 1973. Cal. C. Civ. Proc. Sec. 1244.

Amendments

The 1973 amendment inserted "mortgagees and lien holders of record" following "owners," "any other" before "claimants" and "of record" following "property" in subdivision 2.

93-9909. (9941) **Summons, what to contain, etc.**

Service of Complaint with Summons

Requirement that a copy of the complaint must be served with the summons is effectively met, so long as both are served at least twenty days prior to the time designated for hearing, and there is no requirement that they be served on the same day. State Highway Commission v. District Court, — M —, 499 P 2d 1228.

93-9911. (9943) **Power of court—preliminary condemnation order.**

Access Rights

In condemnation proceeding involving access to portion of farm divided by interstate highway, district court had power to require state to incorporate in its construction plans such structures as would allow two lane access across county road; but district court did not have power to require state to submit such plans to court for its approval since such matters were within purview of activities of highway commission. State ex rel. State Highway Commission v. Lavoie, 155 M 39, 466 P 2d 594.

Necessity of Use

Before district court may order condemnation, this section requires that it must find that proposed taking is necessary to public use under circumstances of individual case. Montana Power Co. v. Bokma, 153 M 390, 457 P 2d 769.

Underpass

Where 40.89 acres of ranch land were taken by the state highway commission as a right of way for an interstate highway, consisting of four lanes in width and fully controlled access, which split the remaining land into two divisions, leaving 432.69 acres, on which farm headquarters was located, on the north side of the highway and 393.42 acres on the south side of the highway, trial court in its preliminary order of condemnation properly ordered the commission to construct and maintain at its own expense an underpass leading from one side of the highway to the other. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 496.

93-9912. (9944) **Appointment and meeting of commissioners.** Immediately upon making and entering the preliminary condemnation order the judge must meet with the respective parties, or their attorneys of record, for the purpose of appointing condemnation commissioners to ascertain and determine the amount to be paid by the plaintiff to each owner or other persons interested in such property by reason of the appropriation of such property. The court must thereupon appoint three (3) qualified, disinterested condemnation commissioners. One of such

commissioners shall be nominated by the party or parties plaintiff; one of such commissioners shall be nominated by the party or parties defendant. The third commissioner shall be the chairman and shall be nominated by the two (2) commissioners previously nominated, provided, however, that if said two (2) commissioners fail to make such choice at the time of their appointment, then such nomination shall be made by the presiding judge. Each commissioner shall possess the following qualifications: a citizen of the United States and over eighteen (18) years of age; that he is not more than seventy (70) years of age; that he is in possession of natural faculties, of ordinary intelligence and not decrepit; that he is possessed of sufficient knowledge of the English language; that he was assessed on the last assessment roll of a county within the judicial district in which the action is pending; that he has not been convicted of malfeasance in office, or any felony or other high crime; that he is not related within the sixth degree to any party; that he does not stand in the relation of guardian and ward, master and servant, debtor and creditor, or principal and agent, or partner or surety as to any party. At the time of such meeting and nominations there shall be filed with the court by each nominating party or judge an affidavit of the person so nominated stating substantially as follows: that he has formed no unqualified opinion or belief as to the compensation to be awarded in the proceeding or as to the fairness or unfairness of the plaintiff's offer for the lands and improvements of the defendants; and that he has no enmity against or bias in favor of any party and has not discussed, communicated or overheard or read any discussion or communication from any party relating to values of the lands in question or the compensation offered, demanded or to be awarded; that if selected as a condemnation commissioner he is willing to serve and will well and truly try the issues of compensation and a true decision render according to the evidence and in compliance with the instructions of the court; that he will not discuss the case with anyone except the other commissioners until a decision has been filed with the court.

Immediately upon such nomination and appointment of commissioners the same shall proceed to meet at the time and place stated in the order appointing them, which time shall be not more than ten (10) days after the order of appointing, and proceed to examine the lands sought to be appropriated. At a time appointed by the judge and within said ten (10) day period they shall hear the allegations and evidence of all persons interested in each of the several parcels of land. Such hearing shall be attended by, and presided over by, the presiding judge who shall make all necessary rulings upon procedure and the admissibility of evidence. At the conclusion of the aforesaid hearing, the court or judge shall instruct the commissioners as to the law applicable to their deliberations and shall instruct them that their duty is to determine, solely upon the basis of said examination of lands, the evidence produced at the hearing or hearings and the instructions of the court, the following:

1. to 4. * * * [Same as parent volume.]

5. Where there are two (2) or more estates or divided interests in property sought to be condemned, the plaintiff is entitled to have the

amount of the award, for said property first determined, as hereinbefore stated, as between plaintiff and all defendants claiming any interests therein; thereafter in the same proceeding the respective rights of each of such defendants in and to the award shall be determined by the commissioners, under supervision and instruction of the court, and the award apportioned accordingly.

History: En. Sec. 608, 1st Div. Comp. Stat. 1887; amd. Sec. 1, p. 269, L. 1891; amd. Sec. 2221, C. Civ. Proc. 1895; re-en. Sec. 7341, Rev. C. 1907; re-en. Sec. 9944, R. C. M. 1921; amd. Sec. 4, Ch. 234, L. 1961; amd. Sec. 19, Ch. 423, L. 1971. Cal. C. Civ. Proc. Sec. 1248.

Amendments

The 1971 amendment reduced the minimum age specified in the fifth sentence of the first paragraph from 21 to 18 years, and made minor changes in style.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of interest. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604, distinguished in State Highway Commission v. Barnes, 151 M 300, 443 P 2d 16.

Expert Testimony as to Value

Testimony of expert witnesses showing that although presently used for agricultural purposes, highest and best use of land was for residential subdivision, showing comparative values of similar land in same geographical area, and showing how property could have been subdivided and how highway running through it detracted from its suitability for subdivision, was sufficient to sustain jury's verdict as against contention of state that expert witnesses based their opinions on mere speculation. Montana State Highway Commission v. Jacobs, 150 M 322, 435 P 2d 274, explained in 155 M 176, 183, 468 P 2d 749.

Measurement of Damages

Where jury in condemnation action awarded damages for land taken in excess of amount requested by landowner and testified to by expert appraisers, trial court properly granted a new trial notwithstanding fact that total award was equal to amount sought by landowner as total damages. State Highway Commission v. Emery, 156 M 507, 481 P 2d 686.

Measure of Damages—Leasehold Interests

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Severance Damages

While it is proper for the trial court to determine whether there has been an impairment of access, the question of the extent to which access has been impaired is for the jury, and it was not error for the court to refuse to give instructions to the effect that all means of access to the defendant's property had been destroyed. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

To determine what is "remainder" of property taken under statute providing for damages for depreciation in value of portion of land not sought to be condemned, there are generally three tests: (1) unity of ownership, (2) contiguity, (3) unity of use; claimant who conveyed part of tract of subsequently condemned land to corporation was not entitled to compensation for depreciation in value to land he still held because claimant and corporation were two distinct owners and hence unity of ownership was absent even though claimant was majority shareholder of corporation and lands were contiguous. Montana State Highway Commission v. Robertson & Blossom Inc., 151 M 205, 441 P 2d 181.

Verdict Form

It was not prejudicial error for the trial judge to give the jury a verdict form which was in accord with this section and which verdict was not out of proportion to the damage done the defendant. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

93-9913. (9945) **The date with respect to which compensation shall be assessed.** For the purpose of assessing compensation the right thereto shall be deemed to have accrued at the date of the service of the summons, and its actual value as of that date shall be the measure of compensation for all property to be actually taken, and the basis of depreciation in

value of property not actually taken, but injuriously affected. This shall not be construed to limit the amount of compensation payable by the state highway commission under the provisions of any legislation enacted pursuant to the Federal Highway Beautification Act of 1965. If an order be made letting the plaintiff into possession, as provided in section 93-9920, the full amount finally awarded shall draw lawful interest from the date on which the property owner surrenders possession of the property in accordance with the terms of such order to the earlier of the following dates:

(a) The date on which the right to appeal to the Montana supreme court expires, or if appeal is filed, to the date of final decision by the supreme court, or

(b) The date on which the property owner withdraws from court the full amount finally awarded.

If the property owner withdraws from court a fraction of the amount finally awarded, interest on such fraction shall cease on the date it is withdrawn but interest on the remainder of the amount finally awarded shall continue to the earlier of the aforesaid dates defined in (a) and (b) of this section. None of the amount finally awarded shall draw interest after the date on which the right to appeal to the Montana supreme court expires. No improvements put upon the property, subsequent to the date of the service of summons, shall be included in the assessment of compensation or depreciation in value, nor shall the same be used as the basis of computing such compensation or depreciation.

History: En. Sec. 591, p. 194, L. 1877; re-en. Sec. 591, 1st Div. Rev. Stat. 1879; re-en. Sec. 609, 1st Div. Comp. Stat. 1887; amd. Sec. 2222, C. Civ. Proc. 1895; re-en. Sec. 7342, Rev. C. 1907; re-en. Sec. 9945, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1957; amd. Sec. 5, Ch. 234, L. 1961; amd. Sec. 1, Ch. 182, L. 1965; amd. Sec. 1, Ch. 187, L. 1967; amd. Sec. 12, Ch. 212, L. 1969. Cal. C. Civ. Proc. Sec. 1249.

Compiler's Notes

The Federal Highway Beautification Act of 1965, referred to in the first paragraph of this section, is compiled in the United States Code as Tit. 23, secs. 131, 136 and 319.

Amendments

The 1965 amendment divided the section into paragraphs; substituted "full amount finally awarded" for "amount awarded" before "shall draw lawful interest" in the third sentence of the first paragraph; substituted "earlier of the following dates" and clauses (a) and (b) at the end of the first paragraph for "date of receipt of the award or any portion thereof"; and substituted the first two sentences of the final paragraph for "provided, however, that interest shall not be allowed or paid on so much thereof as shall have been paid to the landowner involved or withdrawn by such landowner from the court."

The 1967 amendment added to the first sentence of the initial paragraph, "and the reasonable cost of removal of all necessary personal property from the condemned real property within a reasonable distance in the area, not to exceed the sum of six thousand dollars ($6,000) in the case of a business, farm or ranch relocation, and not to exceed the sum of four hundred dollars ($400) in any other case"; inserted the second sentence; and, at the end of subparagraph (a), added "if appeal is filed to the date of final decision by the supreme court, or."

The 1969 amendment deleted the provision, inserted by the 1967 amendment, concerning removal of personalty.

Separability Clause

Section 2 of Ch. 182, Laws 1965 read "If any section, paragraph, sentence, clause or provision of this act shall for any reason be held invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, paragraphs, sentences, clauses or provisions of this act."

Repealing Clause

Section 3 of Ch. 182, Laws 1965 read "All acts, or parts thereof, inconsistent

herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any act or part thereof, heretofore repealed."

Effective Date

Section 4 of Ch. 182, Laws 1965 provided the act should be in effect from and after its passage and approval. Approved March 4, 1965.

Appeal

In eminent domain proceedings the findings of the district court will generally not be disturbed on appeal unless they are so obviously and palpably out of proportion to the injury done as to be in excess of just compensation provided for by section 14, article III of the Montana constitution. State Highway Commission v. Woodcock, 147 M 291, 411 P 2d 357.

Assessment of Compensation

Where condemnee's house was between 50 and 60 years old and had been converted into a multiple family dwelling, court did not err in excluding evidence of reconstruction costs or comparable sales elsewhere in determining value of the property since there was no way of determining depreciation of the old house in arriving at reconstruction cost figures, nor were there sufficient comparable sales in the area. State Highway Commission v. Tubbs, 147 M 296, 411 P 2d 739.

Commercial Use

Where state highway commission in order to show public access to highway presented two appraisal witnesses to show that there was access at a certain exit in which case there would be no loss of commercial usefulness, it was quite proper and necessary to rebut this testimony and to let the jury know the type of easement provided for the access exit. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 498.

Cost of Moving Personal Property

Where friends of condemnees gratuitously aided them in moving personal property from condemned realty, condemnees were not entitled to recover the costs of their friends' labor as an element of damages. State Highway Commission v. Manry, 143 M 382, 390 P 2d 97.

Depreciation on Inventory

This section requires the state to pay for any damage to personal property removed from condemned land including any depreciation in the inventory value of such property. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Improvements

In eminent domain proceeding trial court did not err in excluding evidence concerning improvement of sole access road to ranch property remaining after state highway commission had taken part of the property for right of way for interstate highway, where any changes in access were made after the date of service of the summons in the condemnation action. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 497.

Market Value

The proper value of a leasehold interest is the fair market value not the market value less future rent to be paid. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604.

Where state not only took part of plaintiff's land, but also eliminated an old channel of water and diked up a new channel, thus creating a flood basin on plaintiff's land, evidence of actual results of taking was proper, even though land values are usually measured as of the date of summons. State Highway Commission v. Biastoch Meats, Inc., 145 M 261, 400 P 2d 274.

When there is a market for the type of property being condemned, and the property has no other intrinsic value, courts will adopt a market value in determining the actual value of the property, which is nothing more than the price resulting from fair negotiations between a willing seller and buyer. State Highway Commission v. Tubbs, 147 M 296, 411 P 2d 739.

Where actual value as determined by jury is based on credible testimony as to market value of highest and best use for which land is available, the verdict and judgment will not be set aside. State Highway Commission v. Vaughan, 155 M 277, 470 P 2d 967.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-9915. (9947) Appeal from assessment of commissioners.

Apportionment of Damages

It was not error for the jury to express its award of damages separately to lessor and lessee rather than state a single lump sum when such award was not excessive, was supported by substantial evidence, and did not reflect an increased valuation due solely to a distribution of title. State Highway Commission v. City Service Co., 142 M 559, 385 P 2d 604, distinguished in State Highway Commission v. Barnes, 151 M 300, 443 P 2d 16.

93-9917. (9949) Payment of damages or deposit of bond therefor.

Delay in Payment of Damages

In eminent domain proceedings where the state highway commission did not move within thirty days as required by this section, it could not excuse its failure to pay by alleging that it had no notice of the entry of judgment when the commission itself had caused the judgment to be entered. Robertson v. State Highway Commission, 148 M 275, 420 P 2d 21, 24.

93-9918. (9950) Damages—to whom paid.

Delay in Payment of Damages

In eminent domain proceeding where the state highway commission did not move within thirty days as required by section 93-9917, it could not excuse its failure to pay by alleging that it had no notice of the entry of the judgment when the commission itself had caused the judgment to be entered. Robertson v. State Highway Commission, 148 M 275, 420 P 2d 21, 24.

Stay of Execution

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under this section had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011 since under Rule 62(e), no security was required from the state. Robertson v. State Highway Commission, 148 M 275, 420 P 2d 21, 24.

93-9920. (9952) Putting plaintiff in possession.

References

State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692 (concurring opinion); State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-9921. (9953) Repealed.

Repeal

Section 93-9921 (Sec. 597, p. 195, L. 1877), relating to allowance and apportionment of costs, was repealed by Sec. 2, Ch. 453, Laws 1973. For new law, see sec. 93-9921.1.

93-9921.1. Necessary expenses of litigation. The condemnor, shall within thirty (30) days after an appeal is perfected from the commissioner's award or report, submit to condemnee a written final offer of judgment for the property to be condemned, together with necessary expenses of condemnee then accrued.

If at any time prior to ten (10) days before trial, the condemnee serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible at the trial except in a proceeding to determine costs. The fact that an offer is made but not accepted does not preclude a subsequent offer. In the event of litigation, and when the private property owner prevails, by receiving an award in excess of the final offer of the condemnor, the court shall award necessary expenses of litigation to the condemnee.

History: En. 93-9921.1 by Sec. 1, Ch. 453, L. 1973.

Title of Act

An act implementing article II, section 29 of the 1972 Montana constitution, by providing for an award including necessary expenses of litigation when the private property owner prevails; repealing section 93-9921, R. C. M. 1947.

Repealing Clause

Section 2 of Ch. 453, Laws 1973 read "Section 93-9921, R. C. M. 1947, is repealed."

93-9927. Relocation assistance—purpose of act. It is the purpose of this act to provide for uniform and equitable treatment of persons dis-

placed from their homes, businesses, or farms as a result of federally assisted programs, to establish uniform and equitable land acquisition policies for federally assisted programs and to comply with the federal "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970."

History: En. Sec. 1, Ch. 3, 2nd Ex. L. 1971.

Title of Act

An act to provide for relocation assistance to persons displaced as a result of acquisition of land for federally assisted programs and to provide for acquisition practices.

93-9928. Definition of terms in relocation assistance law. As used in this act, unless the context otherwise requires:

(1) "Agency" means the state of Montana, a political subdivision of the state or any department, agency or instrumentality of the state of Montana or of a political subdivision of the state.

(2) "Average annual net earnings" means one-half (½) of any net earnings of a business or farm operation, before federal and state income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from real property acquired for a project of an agency (for which federal financial assistance is available to pay all or any part of the cost) or during such other period as the acquiring agency determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period.

(3) "Business" means any lawful activity, excepting a farm operation, conducted primarily:

(a) for the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(b) for the sale of services to the public;

(c) by a nonprofit organization; or

(d) solely for the purposes of section 3 [93-9929] (1) of this act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.

(4) "Displaced person" means any person who, on or after the effective date of this act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of an acquiring agency to vacate real property, for a program or project undertaken by the agency, for which federal financial assistance will be available to pay all or any part of the cost; and solely for the purposes of section 3 [93-9929] (1) and (2) and section 6 [93-9932] of this act, as a result of the acquisition of, or as the result of the written order of, the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project. The term

"displaced person" also includes a person who moves or discontinues his business or moves other personal property, or moves from his dwelling as the direct result of code enforcement activities, or a program of rehabilitation of buildings conducted pursuant to a federal program.

(5) "Federal act" means the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970" or as that act may be amended.

(6) "Federal financial assistance" means a grant, loan, or contribution provided by the United States except any federal guarantee or insurance.

(7) "Farm operation" means any activity conducted solely or primarily for the production of one (1) or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(8) "Person" means any individual, partnership, corporation or association.

History: En. Sec. 2, Ch. 3, 2nd Ex. L. 1971.

93-9929. Payments to displaced persons—moving expense allowance—business losses. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall make payment to the displaced person, upon application as approved by the agency, for:

(a) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(b) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the agency; and

(c) actual reasonable expenses in searching for a replacement business or farm.

(2) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from a dwelling may elect to receive a moving expense allowance determined according to a schedule established by the agency and a dislocation allowance, neither of which may exceed the maximum allowances under section 202 (b) of the federal act.

(3) In lieu of payments for actual expenses and losses under subsection (1) of this section a person who is displaced from his place of business or from his farm operation may receive a fixed payment in an amount equal to the average annual net earnings of the business or farm operation provided that:

(a) the payment shall not be less nor more than the amounts set forth in section 202 (c) of the federal act;

(b) in the case of a business no payment shall be made under this subsection unless the acquiring agency is satisfied that the business cannot

be relocated without a substantial loss of its existing patronage and is not a part of a commercial enterprise having at least one (1) other establishment not being acquired by an agency, which is engaged in the same or similar business.

History: En. Sec. 3, Ch. 3, 2nd Ex. L. 1971.

93-9930. Additional payments for displacement from dwelling owned by occupant. (1) In addition to payments otherwise authorized by this act, the acquiring agency shall make an additional payment to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:

(a) the amount may not exceed the amount allowed under section 203 of the federal act,

(b) the amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market. All determinations required to carry out this subsection (b) shall be made in accordance with regulations issued by the acquiring agency.

(c) the amount, if any, which will compensate the displaced person for any increased interest costs which the person is required to pay for financing the acquisition of any comparable replacement dwelling. The amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than one hundred and eighty (180) days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(d) reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(2) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one (1) year period beginning on the date on which he received from the agency final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

History: En. Sec. 4, Ch. 3, 2nd Ex. L. 1971.

93-9931. Additional payments for displacement from rented dwelling. In addition to amounts otherwise authorized by this act the acquiring agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4 [93-9930] of this act if the dwelling was actually and lawfully occupied by the displaced person for not less than ninety (90) days prior to the initiation of negotiations for acquisition of such dwelling. The payment shall be either:

(1) the amount necessary to enable the displaced person to lease or rent for a period not to exceed four (4) years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed the amount allowable under section 204 of the federal act; or

(2) the amount necessary to enable such person to make a down payment (including reasonable expenses for evidence of title, recording fees, and other closing costs incident to the purchase of a dwelling, but not including prepaid expenses) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities. The amount payable under this subsection (2) shall not exceed the amount allowable under section 204 of the federal act and shall be subject to the same matching requirements as under said section.

History: En. Sec. 5, Ch. 3, 2nd Ex. L. 1971.

93-9932. Relocation advisory services. (1) Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall provide a relocation assistance advisory program for displaced persons which offers the services described in this section. If the acquiring agency determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services.

(2) The relocation advisory service may include such budget, debt management and related counseling services as the acquiring agency determines will assist the displaced person. The relocation assistance program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

(a) determine the need, if any, of displaced persons, for relocation assistance;

(b) provide current and continuing information on the availability, prices, and rentals of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(c) assist a displaced person displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(d) supply information concerning federal and state housing programs, disaster loan programs and other federal or state programs offering assistance to displaced persons; and

(e) provide other advisory services to displaced persons in order to minimize hardships to displaced persons in adjusting to relocation;

(f) secure the co-ordination of relocation activities with other project activities and other planned or proposed federal or state actions in the community or nearby areas which may affect the relocation program.

(3) In order to prevent unnecessary expenses and duplication of functions and to promote uniform and effective administration of relocation assistance programs, an agency may enter into contracts with any individual, firm, association, or corporation for services in connection with such programs, or may carry out its functions under this act through any federal or state agency having an established organization for conducting relocation assistance programs. Each agency whenever practicable, shall utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

History: En. Sec. 6, Ch. 3, 2nd Ex. L. 1971.

93-9933. Assurance of availability of suitable replacement dwellings. Whenever the acquisition of real property for a program or project of an agency (for which federal financial assistance is available to pay all or any part of the cost) will result in the displacement of any person, the agency shall assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the federal agency concerned with administering the federal financial assistance, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment.

History: En. Sec. 7, Ch. 3, 2nd Ex. L. 1971.

93-9934. Relocation costs included in project costs—replacement housing. The acquiring agency shall include the cost of providing payments and assistance under the provisions of this act in the cost of any project for which federal financial assistance is available to pay all or any part of the cost. The acquiring agency shall also provide the payments and assistance and assure the availability of replacement housing for displaced persons, who are displaced as a result of real property being acquired by an agency and furnished as a required contribution incident to a federal program or project.

History: En. Sec. 8, Ch. 3, 2nd Ex. L. 1971.

93-9935. Public assistance eligibility unimpaired—tax exemption of payments. No payment received by a displaced person under this act shall be considered as income or resources for the purpose of determining the eligibility of any person for assistance under any state law or for the purposes of determining income under state tax laws.

History: En. Sec. 9, Ch. 3, 2nd Ex. L. 1971.

93-9936. Appeal to district court from administrative determination. Any person aggrieved by final administrative determination concerning eligibility for relocation payments authorized by this act may appeal such determination to the district court of the county in which the land acquired is located.

History: En. Sec. 10, Ch. 3, 2nd Ex. L. 1971.

93-9937. Appraisal and negotiation policies—time allowed to move—condemnation proceedings. An agency which acquires real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of such program or project shall comply with the following policies:

(1) The agency shall make every reasonable effort to acquire expeditiously real property by negotiation.

(2) Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.

(3) Before the initiation of negotiations for real property, an amount shall be established which it is reasonably believed is just compensation therefor and such amount shall be offered for the property. In no event shall such amount be less than the approved appraisal of the fair market value of such property. Any decrease or increase in the fair market value of real property prior to the date of valuation caused by the public improvement for which such property is acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to physical deterioration within the reasonable control of the owner, shall be disregarded in determining the compensation for the property. The owner of the real property to be acquired shall be provided with a written statement of, and summary of the basis for, the amount established as just compensation. Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

(4) No owner shall be required to surrender possession of real property before the agreed purchase price is paid or before there is deposited with the court, in accordance with applicable law, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property, or the amount of the award of compensation in the condemnation proceeding of such property.

(5) The construction or development of a program or project for which federal financial assistance will be available to pay all or any part

of the cost of the program or project shall be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from a dwelling (assuming a replacement dwelling will be available) or to move his business or farm operation without at least ninety (90) days' written notice of the date by which such move is required.

(6) If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the acquiring agency on short notice, the amount of rent required shall not exceed the fair rental value of the property to a short-term occupier.

(7) In no event shall the time of condemnation be advanced, or negotiations or condemnation and the deposit of funds in court for the use of the owner be deferred, or any other action coercive in nature be taken to compel an agreement on the price to be paid for the property.

(8) If an interest in real property is to be acquired by exercise of the power of eminent domain, formal condemnation proceedings shall be instituted. The acquiring agency shall not intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property.

(9) If the acquisition of only part of the property would leave its owner with an uneconomic remnant, an offer to acquire the entire property shall be made.

History: En. Sec. 11, Ch. 3, 2nd Ex. L. 1971.

93-9938. Advancement of closing costs and taxes incurred by owner. Any agency acquiring real property for a program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project shall, as soon as practicable after the date of payment of the purchase price or the date of deposit into court of funds to satisfy the award of compensation in a condemnation proceeding to acquire real property, whichever is the earlier, reimburse the owner, to the extent the acquiring agency deems fair and reasonable, for expenses he necessarily incurred for recording fees, transfer taxes, and similar expenses incidental to conveying such real property to the acquiring agency; penalty costs for prepayment for any pre-existing recorded mortgage or deed of trust entered into in good faith encumbering such real property; and the prorata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the acquiring agency, or the effective date of possession of such real property by the acquiring agency, whichever is the earlier.

History: En. Sec. 12, Ch. 3, 2nd Ex. L. 1971.

93-9939. Reimbursement of costs when condemnation proceedings abandoned. Where a condemnation proceeding is instituted by an agency to acquire real property for a program or project for which federal financial assistance is available, and the final judgment is that the real property

cannot be acquired by condemnation or that the proceeding is abandoned, the owner of any right, title, or interest in such real property shall be paid such sum as will, in the opinion of the court, reimburse such owner for his reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings. The award of such sums will be paid by the agency which sought to condemn the property.

History: En. Sec. 13, Ch. 3, 2nd Ex. L. 1971.

93-9940. Expenses included in inverse condemnation judgment or settlement. Where an inverse condemnation proceeding is instituted by the owner of any right, title, or interest in real property because of the alleged taking of his property for any program or project for which federal financial assistance will be available to pay all or any part of the cost of the program or project, the court, rendering a judgment for the plaintiff in such proceeding and awarding compensation for the taking of property, or attorney for the acquiring agency effecting a settlement of any such proceeding, shall determine and award or allow to such plaintiff, as a part of such judgment or settlement, such sum as will, in the opinion of the court or such attorney, reimburse such plaintiff for his reasonable costs, disbursements, and expenses including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

History: En. Sec. 14, Ch. 3, 2nd Ex. L. 1971.

93-9941. Acquisition of buildings and improvements affected—payments to tenant. (1) Where any interest in real property is acquired for a program or project for which federal assistance will be available to pay all or any part of the cost of the program or project, the acquiring agency shall acquire an equal interest in all buildings, structures, or other improvements located upon the real property so acquired and which are required to be removed from such real property or which the acquiring agency determines will be adversely affected by the use to which such real property will be put.

(2) For the purpose of determining the just compensation to be paid for any building, structure, or other improvement required to be acquired by subsection (1) of this section, such building, structure, or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove such building, structure, or improvement at the expiration of his term, and the fair market value which such building, structure, or improvement contributes to the fair market value of the real property to be acquired, or the fair market value of such building, structure, or improvement for removal from the real property, whichever is the greater, shall be paid to the tenant therefor.

Payment for such buildings, structures, or improvements as set forth in this subsection (2) shall not result in duplication of any payments otherwise authorized by state law. No such payment shall be made unless the owner of the land involved disclaims all interest in the improvements

of the tenant. In consideration for any such payment the tenant shall assign, transfer, and release all his right, title, and interest in and to such improvements. Nothing in this subsection (2) shall be construed to deprive the tenant of any rights to reject payment and to obtain payment for such property interests in accordance with other laws of the state.

History: En. Sec. 15, Ch. 3, 2nd Ex. L. 1971.

93-9942. Duplication of eminent domain payments not intended. No payment or assistance provided for in this act shall be required to be made by an agency if the displaced person receives a payment required by the laws of eminent domain which is determined by the agency to have substantially the same purpose and effect as such payment under this act.

History: En. Sec. 16, Ch. 3, 2nd Ex. L. 1971.

93-9943. New rights and powers not created. (1) The provisions of section 7 [93-9933] of this act create no rights or liabilities and shall not affect the validity of any property acquisition by purchase or condemnation.

(2) Nothing in this act shall be construed as creating in any condemnation proceedings brought under the power of eminent domain any element of value or damage not in existence immediately prior to the effective date of this act.

(3) Nothing in this act shall be construed as, directly or indirectly, granting any new or additional power of eminent domain.

History: En. Sec. 17, Ch. 3, 2nd Ex. L. 1971.

93-9944. Application to all federally assisted programs. This act shall apply to all acquisitions of real property by an agency for a program or project for which federal financial assistance is available to pay all or any part of the cost.

History: En. Sec. 18, Ch. 3, 2nd Ex. L. 1971.

CHAPTER 100—NAMES—CHANGE OF NAMES OF PERSONS —OF WATERCOURSES

Section 93-100-2. Application for change of name—how made.

93-100-2. (9964) **Application for change of name—how made.** All applications for change of names must be made to the district court of the county where the person whose name is proposed to be changed resides, by petition, signed by such person; and if such person is under eighteen (18) years of age, by one of the parents, if living, or if both be dead, then by the guardian; and if there be no guardian, then by some near relative or friend. The petition must specify the place of birth and residence of such person, his or her present name, the name proposed, and the reason for such change of name; and must, if the father of such

person be not living, name, as far as known to the petitioner, the near relatives of such person, and their place of residence. Any religious, benevolent, literary, scientific corporation, or any corporation bearing or having for its name, or using or being known by the name of, any benevolent or charitable order or society, may, by petition, apply to the district court of the county in which its articles of incorporation were originally filed, or in which the property of such corporation is situated, for a change of its corporate name. Such petition must be signed by a majority of the directors or trustees of the corporation, and must specify the date of the formation of the corporation, the name proposed, and the reason for such change of name. Upon filing such petition on behalf of such corporation, the same proceedings shall be had as upon applications for changes of names of natural persons, and no banking corporation hereafter organized shall adopt or use the name of any other banking corporation or association, or of any friendly association.

History: En. Sec. 2261, C. Civ. Proc. 1895; re-en. Sec. 7361, Rev. C. 1907; amd. Sec. 1, Ch. 39, L. 1921; re-en. Sec. 9964, R. C. M. 1921; amd. Sec. 21, Ch. 240, L. 1971; amd. Sec. 33, Ch. 94, L. 1973.

Amendments

The 1971 amendment changed the age specified in the first sentence from 21 for males and 18 for females to 19 for either.

The 1973 amendment reduced the age specified in the first sentence from nineteen to eighteen years.

CHAPTER 301—EVIDENCE—DEFINITIONS—KINDS AND DEGREES OF

93-301-4. (10491) **The degree of proof required to establish facts.**

Criminal Cases

Evidence that included victim's testimony corroborated by medical evidence was sufficient to support jury conviction of statutory rape. State v. Anderson, 156 M 122, 476 P 2d 780.

Insufficient Evidence

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his prorata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-13 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restaurant. Joseph v. Hustad Corp., 153 M 121, 454 P 2d 916.

Where owner of mineral rights to property built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed, since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-13. Hurley v. Northern Pacific R. Co., 153 M 199, 455 P 2d 321.

93-301-11. (10498) **Prima-facie evidence defined.**

Ownership of Cattle

Although under sections 46-606 and 67-308 prima facie the owners of the recorded brand have the same interest in the cattle bearing their brand as shown in brand record, joint ownership of the cattle may be contradicted and overcome by other evidence under this section. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 490.

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by deceased during his last illness, evidence that deceased had a half interest in partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 491.

Statutory Rape

Prima facie case of statutory rape was established by testimony of rape victim on cross- and redirect examination that defendant had committed an act of sexual intercourse with her. State v. Anderson, 156 M 122, 476 P 2d 780.

93-301-13. (10500) Satisfactory evidence defined.

Insufficient Evidence

Where lessee alleged breach of covenant of quiet enjoyment on grounds that he had been substantially deprived of his prorata share of parking spaces in shopping center lot, his evidence in support of allegations was insufficient under this section and section 93-301-4 since it consisted only of testimony that on one occasion parking lot was full but only three tables were occupied in lessee's restaurant. Joseph v. Hustad Corp., 153 M 121, 454 P 2d 916.

Where owner of mineral rights to property built road for access to his oil well on property owned by plaintiff and such road was alleged to have been causing plaintiff's dam and spillway to erode, jury verdict of damages for such injury was reversed since dam and spillway had not in fact washed out and evidence did not indicate conclusively that washout was inevitable; therefore plaintiff's evidence did not preponderate in favor of findings on which it was based as provided by this section and section 93-301-4. Hurley v. Northern Pacific R. Co., 153 M 199, 455 P 2d 321.

CHAPTER 401—EVIDENCE—GENERAL PRINCIPLES OF

93-401-4. (10508) Witness presumed to speak the truth.

Accomplice as Witness

In a first degree burglary case the credibility of the defendant's accomplice, a convicted felon, was for the jury. State v. Barick, 143 M 273, 389 P 2d 170.

Credibility of Witnesses

Testimony that a truck had earlier been observed traveling at 65 to 70 miles per hour was admissible to impeach the credibility of driver's employer, who had testified that the truck could not attain speeds higher than 35 to 38 miles per hour. Seder v. Peter Kiewit Sons' Co., 156 M 322, 479 P 2d 448.

93-401-7. (10511) Declarations which are a part of the transaction.

Time between Transaction and Declaration

In a negligence action by passenger of car struck by truck, testimony of truck driver concerning declarations of driver of automobile concerning speed at which he was traveling was admissible even though made some ten minutes after collision. Blevins v. Weaver Constr. Co., 150 M 158, 432 P 2d 378.

93-401-9. (10513) Declaration of decedent evidence of pedigree.

References

Cited in Bender v. Bender, 144 M 470, 397 P 2d 957.

93-401-11. (10515) When part of the transaction proved, etc.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751.

93-401-12. (10516) Contents of writing—how proved.

Duplicate Original

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original retail installment contract without explanation of failure to produce the ribbon copy. Morris v. Langhausen, 155 M 362, 472 P 2d 860.

Laboratory Test Results

In an action for damages for death of dairy cows and losses occasioned by poisoning, allowing cattle owner to testify concerning laboratory test results was not prejudicial where the testimony was brought out properly later without objection. Hopkins v. Ravalli County Electric Cooperative, Inc., 144 M 161, 395 P 2d 106, 109, 12 ALR 3d 1096.

93-401-13. (10517) An agreement reduced to writing deemed the whole.

Clear Language

Parol testimony was not admissible to extend the term of a permissive easement beyond the expiration date set in a written agreement that clearly contained no mistake, imperfection or ambiguity. Larson v. Burnett, 158 M 421, 492 P 2d 921.

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. Superior Oil Co. v. Vanderhoof, 297 F Supp 1086.

Completeness of Writing

Statements made by various agency personnel in regard to continued use of defendant's office building were not admissible under parol evidence rule to alter or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. United States v. Willard E. Fraser Co., 308 F Supp 557, affirmed 459 F 2d 483.

References

State Highway Commission v. Churchwell, 146 M 52, 403 P 2d 751; Thisted v. Country Club Tower Corp., 146 M 87, 405 P 2d 432.

93-401-15. (10519) Construction of statutes and instruments, etc.

Insurance Policy

Clause in disability insurance policy which provided that benefits were payable only in cases involving continuous and total disability within 30 days of date of accident preventing performance of every duty pertaining to insured's occupation, precluded recovery under policy by insured who returned to work temporarily within 30-day period and was able to do a portion of his duties since, where language admits of only one meaning, there is no room for interpretation under the guise of ambiguity. Nelson v. Combined Ins. Co. of America, 155 M 105, 467 P 2d 707.

References

In re Jones' Estate, 146 M 439, 408 P 2d 482; Wolff v. Standard Life & Accident Ins. Co., 147 M 460, 416 P 2d 11, 17.

93-401-17. (10521) The circumstances to be considered.

Building Lease

Statements made by various agency personnel in regard to continued use of defendant's office building were not admissible under parol evidence rule to alter or contradict terms of express written contract since such statements and assurances did not come within any recognized exception to rule and since defendant admitted that he knew written contract would be controlling. United States v. Willard E. Fraser Co., 308 F Supp 557, affirmed 459 F 2d 483.

Intention of Parties

Informal written instrument stating "I wish to pay" and uncontradicted evidence that donor rejected lawyers and wanted to give a gift established donative intent. Faith Lutheran Retirement Home v. Veis, 156 M 38, 473 P 2d 503.

Mineral Deed

No ambiguity existed between clause conveying one-half of the minerals in 1,040 acres and the conveyance of 520 mineral acres, so that mineral deed could not be varied by parol evidence. Superior Oil Co. v. Vanderhoof, 297 F Supp 1086.

References

Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739; Thisted v. County Club Tower Corp., 146 M 87, 405 P 2d 432; Ryan v. Ald, Inc., 146 M 299, 406 P 2d 373.

93-401-26. (10530) Affirmative only can be proved.

Notice

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had

burden of proof. Glacier General Assurance Co. v. State Farm Mutual Automobile Ins. Co., 150 M 452, 436 P 2d 533.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. Baker Nat. Bank v. Lestar, 153 M 45, 453 P 2d 774.

References

Colarchik v. Watkins, 144 M 17, 393 P 2d 786.

93-401-27. (10531) Facts which may be proved on trial.

Admission by Living Person

In an action by property owner against church camp for damage from fire begun by camp counselor, letter written by counselor admitting starting fire accidentally was inadmissible as declaration against interest since counselor, although unavailable to testify, was not dead within requirement of subdivision 4. MacDonald v. Protestant Episcopal Church, 150 M 332, 435 P 2d 369.

Admissions against Interest—Pleadings

Pre-trial order which limited issues to be litigated did not supersede plaintiff's original complaint to sustain trial court's ruling that defendant could not use complaint to cross-examine plaintiff concerning certain inconsistencies between plaintiff's original complaint and his testimony; although this refusal by trial court was error, it was not ground for reversal since error was "harmless." Fox v. Fifth West, Inc., 153 M 95, 454 P 2d 612.

Expert Testimony

Ex-highway patrolman, who had twenty years' experience investigating automobile accidents, including determinations of speed from skidmarks and surrounding circumstances, and was skilled in use of graphs and charts used by National Safety Council and Montana Highway Patrol in connection with determining speed from skidmarks, was qualified to give expert opinion evidence as to speed of defendant's automobile, even though he had retired from highway patrol some six years previously, had first heard of accident two weeks before trial, did not measure drag factor or coefficient of friction on particular road surface involved and, as mere highway patrolman, would not have been permitted to testify to investigation made year and one-half after accident. Graham v. Rolandson, 150 M 270, 435 P 2d 263.

References

Cited in Bender v. Bender, 144 M 470, 397 P 2d 957; McReynolds v. McReynolds, 147 M 476, 414 P 2d 531.

CHAPTER 501—EVIDENCE—JUDICIAL NOTICE OF FACTS AND FOREIGN LAWS

93-501-1. (10532) Certain facts of general notoriety assumed to be, etc.

Actual Knowledge

The burden of proof is on the individual litigant, and the courts are not required by the doctrine of judicial notice to inform themselves of facts not within the actual knowledge of the court, nor need the courts take judicial notice of a fact or facts when the party desiring such notice does not request it. Holtz v. Babcock, 143 M 341, 389 P 2d 869, 390 P 2d 801.

Judicial Acts and Records

Probate judge, in determining distribution of estate, has power to determine circumstances of decedent's death and in doing so properly took notice under subdivision 2 of this section of wife's conviction of manslaughter in death of her husband. Sikora v. Sikora, — M —, 499 P 2d 808.

Succession to Office

The court took notice that upon his death the governor was succeeded as provided by law. Holtz v. Babcock, 143 M 341, 389 P 2d 869, 390 P 2d 801.

References

Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749; State v. Peters, 146 M 188, 405 P 2d 642.

CHAPTER 701—EVIDENCE—WITNESSES

Section 93-701-4. Persons in certain relations cannot be examined.

93-701-1. (10533) Witness defined.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-2. (10534) All persons capable of perceptions, etc.

Felony Conviction

An accomplice may testify in a criminal case even though he is a convicted felon at the time of his testimony. State v. Barick, 143 M 273, 389 P 2d 170.

93-701-3. (10535) Persons who cannot be witnesses.

Deceased Agent—Injustice Prevented

Before a witness who is barred by subdivision 4 will be allowed to testify to prevent an injustice, a foundation must be laid by the introduction of other evidence which shows that in all probability the proponent had a meritorious cause of action. Johnson v. Mommoth Lode & Uranium Exploration Corp., 136 M 420, 348 P 2d 267.

Decedents' Estates—Injustice Prevented

District court did not abuse its discretion in allowing a witness otherwise barred under subdivision 3 to testify as to agreement with partner for mutual wills as against intestate heirs of deceased partner, upon showing that the witness and the deceased held saving accounts, corporate stock, and residence in joint tenancy with right of survivorship, that the witness and the deceased had had a lifelong association and successful partnership under both oral agreement and written articles of copartnership, that the witness had willed his entire estate to the deceased, and the witness and the deceased had intended for the proceeds of the sale of the partnership to be in joint tenancy with right of survivorship and that this was evidenced by an escrow receipt instructing payment of proceeds to a jointly held bank account. Hansen v. Kiernan, — M —, 499 P 2d 787.

Decedent's Estates—Written Communications

Trial court's finding based upon oral testimony concerning terms of contract executed by deceased was error since such oral testimony, varying terms of written contract, was inadmissible under this section. Davison v. Casebolt, 154 M 125, 461 P 2d 2.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-701-4. (10536) Persons in certain relations cannot be examined. There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. to 6. * * * [Same as parent volume.]

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confi-

dence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television.

History: Ap. p. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R. C. M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973.

Amendments

The 1971 amendment added subdivision 7.

The 1973 amendment added subdivision 8.

Attorney and Client

Opinions of house counsel rendered to an employer were entitled to the attorney-client privilege, and where portions of them had been disclosed in camera, the client was entitled to a protective order preventing their further disclosure or use in pleadings by the opponent. State ex rel. Union Oil Co. of California v. District Court, — M —, 503 P 2d 1008.

Physician and Patient

The physician-patient privilege under subsection 4 of this section is not available to a defendant in a criminal action since the provision in section 94-7209 (now 95-3001) incorporating the civil rules of evidence into the criminal law "except as otherwise provided" pertains to the language of subsection 4 which specifically limits the privilege to civil actions. State v. Campbell, 146 M 251, 405 P 2d 978, 22 ALR 3d 824.

References

State v. Barick, 143 M 273, 389 P 2d 170.

CHAPTER 801—EVIDENCE—UNIFORM BUSINESS RECORDS AS EVIDENCE ACT—UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Section 93-801-5. Reproductions of originals.

93-801-1. "Business" defined.

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Business Records as Evidence Act: Connecticut, Michigan, and Rhode Island.

93-801-2. Proof of business records.

Accuracy of Records

In first degree murder trial, transcript of tape-recorded statement by defendant was not admissible as business record where no one testified as to the accuracy of the transcription and tapes were either lost or destroyed sometime between the time of the taking of the statement and the time of the trial. State v. Warwick, 158 M 531, 494 P 2d 627.

Medical Records

Medical testimony based on information acquired from outside sources, including examinations by other doctors, nurse's notes and observation, X-rays, and other tools of the profession used in making a diagnosis is admissible if part of the case file. Klaus v. Hillberry, 157 M 277, 485 P 2d 54.

93-801-5. Reproductions of originals. If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding, whether the original is in existence or not, and an enlargement or facsimile of such reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

History: En. Sec. 1, Ch. 100, L. 1953; amd. Sec. 1, Ch. 160, L. 1969.

Amendments

The 1969 amendment deleted a limitation in the first sentence that original may be destroyed unless "held in a custodial or fiduciary capacity."

NOTE.—Uniform State Law. In addition to the states listed in the note in the parent volume the following also have adopted the Uniform Photographic Copies of Business and Public Records as Evidence Act: Arkansas, Delaware, Michigan, and West Virginia.

CHAPTER 901—EVIDENCE—UNIFORM OFFICIAL REPORTS AS EVIDENCE ACT

93-901-1. Official reports admissible as evidence.

NOTE.—Uniform State Law. Sections 93-901-1 through 93-901-5 constitute the "Uniform Official Reports as Evidence Act" approved by the National Conference of Commissioners on Uniform State Laws in 1936 and adopted in various forms in Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, and also in the Virgin Islands.

CHAPTER 1001—EVIDENCE—PUBLIC WRITINGS

93-1001-9. (10547) Constitution and statutes.

References

State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

93-1001-19. (10557) Copy of a foreign record—when evidence.

References

In re Hosova's Estate, 143 M 75, 387 P 2d 305.

93-1001-30. (10568) **Manner of proving other official documents.**

References

Holtz v. Babcock, 143 M 341, 390 P 2d 801.

CHAPTER 1101—EVIDENCE—PRIVATE WRITINGS

93-1101-9. (10585) **Original writing to be proved or accounted for.**

Duplicate Original

Carbon copy made at same time as original and with all formalities of the first sheet was a "duplicate original" and thereby properly admitted as original retail installment contract without explanation of failure to produce the ribbon copy. Morris v. Langhausen, 155 M 362, 472 P 2d 860.

CHAPTER 1301—EVIDENCE—INDIRECT—INFERENCES AND PRESUMPTIONS

93-1301-1. (10600) **Indirect evidence classified.**

Presumption Regarding Sentencing

Presumption that first offender under Dangerous Drug Act is entitled to delayed imposition of sentence is kind of indirect evidence under this section. State v. Simtob, 154 M 286, 462 P 2d 873.

93-1301-2. (10601) **Inference defined.**

Inference Distinguished from Suspicion

An inference is to be distinguished from mere suspicion which is "the act or an instance of suspecting: imagination or apprehension of something wrong or hurtful without proof or on slight evidence" (quoting Webster's New International Dictionary, 3rd ed. 1961). State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-3. (10602) **Presumption defined.**

Presumption Regarding Sentencing

Presumption regarding sentencing under Dangerous Drug Act "is a deduction which the law expressly directs to be made from particular facts." State v. Simtob, 154 M 286, 462 P 2d 873.

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-4. (10603) **When an inference arises.**

References

State v. Barick, 143 M 273, 389 P 2d 170.

93-1301-5. (10604) **Presumptions may be converted, when.**

Adverse Possession

Although this section provides that presumptions may be overcome by other evidence, presumption of adverse possession was not overcome by evidence showing acquiescence since acquiescence did not amount to permissive use or license. O'Connor v. Brodie, 153 M 129, 454 P 2d 920.

93-1301-6. (10605) **Specification of conclusive presumptions.**

Deed from Mother to Son

Conclusive presumption was not established in situation where court refused to impose constructive trust upon lands deeded to son by aged mother. Bodine v. Bodine, 149 M 29, 422 P 2d 650.

Estoppel by Own Acts

The doctrine of equitable estoppel set forth in subdivision 3 of this section is not available as a defense when the essential elements of estoppel are lacking. Belhumeur v. Dawson, 229 F Supp 78, 86.

Legitimacy

Child is presumed legitimate if mother and father were married. Spradlin v. United States, 262 F Supp 502.

93-1301-7. (10606) All other presumptions may be controverted.

Controversion of Presumption

Presumption that first offender under Dangerous Drug Act is entitled to delayed imposition of sentence is disputable and may be controverted by other evidence but controls unless so contradicted. State v. Simtob, 154 M 286, 462 P 2d 873.

Subdivision 4

Deceased was presumed to have taken ordinary care of his own concerns, however plaintiff's evidence in wrongful death action showing deceased's failure to properly test empty gasoline tank before welding it which could very well have been cause of accident contradicted presumption. Knowlton v. Sandaker, 150 M 438, 436 P 2d 98.

Subdivision 15

Statutory presumption that "official duty has been regularly performed" was not overcome where defendant offered no evidence to show that any prospective juror was improperly excused from service and where judge testified that no prospective juror was excused from service without valid statutory excuse. State v. Corliss, 150 M 40, 430 P 2d 632.

On basis of statutory presumption and on basis of testimony of county employee that he had been ordered to maintain road by county commissioner who was also owner of the land, court concluded that then owner of land regarded road as public highway, in determining that public highway had been established by prescriptive use. Kostbade v. Metier, 150 M 139, 432 P 2d 382.

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless evidence, even though conflicting, preponderates against them. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

Statutory presumption in subdivision 15 imposed a heavy burden upon party attacking bank superintendent's order permitting establishment of another bank in a community, and where superintendent made a thorough investigation, secured opposing views, and considered all evidence, including some confidential evidence as to economic prospects within the community, the evidence that he acted within his discretionary powers was so great as to support a summary judgment denying injunction or prohibition against the superintendent's action. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P 2d 1274.

Statutory presumption of correctness of secretary of state's certification as to total number of electors voting at election on new constitution was overcome by demonstrable fact, apparent from other figures in his certificate, that not that many electors cast valid votes on either side of the question. State ex rel. Cashmore v. Anderson, — M —, 500 P 2d 921.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, but he had counsel to represent him on a second charge brought against him a few days later, presumption that petitioner had voluntarily waived right to counsel on the first charge, besides the fact that he had pleaded guilty to it so that confession was not used against him, reinforced presumption that the proceedings had not violated his constitutional rights. Frost v. State of Montana, 249 F Supp 349.

Subdivision 17

Absent proof that evidence at hearing on entry of default judgment was insufficient or that an erroneous standard of damages was used, presumption that judgment was correct controlled on appeal, and aggrieved party could not attack evidence on which default judgment was based by introducing evidence in support of his proposed defense at hearing on his motion to vacate default judgment. Uffleman v. Labbit, 152 M 238, 448 P 2d 690.

Where petitioner claimed, fourteen years after his conviction, that his confession had been coerced and records of the proceedings against him were incomplete, fact that defendant had pleaded guilty to the crime charged so that confession was not used, and record stated he had waived right to counsel reinforced presumption under this subdivision that defendant's constitutional rights to counsel and against self-incrimination had not been violated. Frost v. State of Montana, 249 F Supp 349.

Subdivision 18

Presumption was not overcome where jury found in favor of defendant on his counterclaim filed in response to plaintiff's action for negligence from which may be inferred fact that issue of defendant's negligence was before the jury and that in not finding for plaintiff jury concluded that defendant was not negligent. Ratcliff v. Murphy, 150 M 31, 430 P 2d 627.

Subdivision 24

Presumption under this section that condemnee had received revised contract from state was strengthened by facts that condemnee received other documents enclosed in the same envelope, the envelope was not returned to the state office and the condemnee was well-known in the vicinity. Crissey v. State Highway Commission, 147 M 374, 413 P 2d 308.

Testimony that notice was signed, placed in properly addressed envelope with sufficient postage thereon and mailed by certified mail was sufficient foundation for district court to admit original document into evidence and make finding that required notice was given. Treasure State Industries, Inc. v. Leigland, 151 M 288, 443 P 2d 22.

Fact that letter addressed to county department of public welfare was mailed does not establish when it was received or that it was received by a responsible official. Application of Hendrickson, — M —, 496 P 2d 1115.

Subdivision 30

Evidence that man and woman exchanged wedding rings, mutually declared their marriage, and thereafter openly lived together, supported finding that they were married. Estate of Swanson, — M —, 502 P 2d 33.

In view of statute recognizing common-law marriage, presumption that man and woman deporting themselves as husband and wife have entered into lawful contract of marriage is itself proof of marriage and is overcome as matter of law only when in light of proved facts reasonable men could no longer find in accordance with presumed fact. Spradlin v. United States, 262 F Supp 502.

Presumption of valid common-law marriage may be overcome if divorce records from the residences of alleged common-law husband reveal that he was not divorced from former wife or had not had former marriage annulled. Spradlin v. United States, 284 F Supp 763.

Subdivision 33

Findings and conclusions of district court are presumed correct and will not be reversed on appeal unless the evidence, even though conflicting, preponderates against them. Breen v. Industrial Accident Board, 150 M 463, 436 P 2d 701.

References

Subdivision 15: Tooker v. State, 147 M 207, 410 P 2d 923; Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

Subdivision 16: Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

Subdivision 17: Tooker v. State, 147 M 207, 410 P 2d 923; Wilson v. Brodie, 148 M 235, 419 P 2d 306, 308.

CHAPTER 1401—EVIDENCE—INDISPENSABLE—UNWRITTEN AGREEMENTS—CONCLUSIVE—UNANSWERABLE

93-1401-7. (10613) Agreement not in writing—when invalid.

Estoppel from Raising Statute

Promisor was estopped from raising statute of frauds as defense to action on oral agreement on basis of evidence of glaring inconsistencies in promisor's position. Daley v. Daley, 150 M 432, 436 P 2d 88.

Note or Memorandum

While the statute of frauds does not require that the memorandum be contained in a single document, where a memorandum did not name the parties to the alleged contract but referred to them as "we" and "our" and also tended to show that further negotiations were intended by the parties, it was not sufficient to satisfy the statute. Anderson v. KFBB Broadcasting Corp., 143 M 423, 391 P 2d 2, distinguished in Daley v. Daley, 150 M 432, 436 P 2d 88.

Part Performance

Where employer had been awarded construction contract to be completed in 360 days and hired employee under oral agreement almost immediately thereafter, fact that contract was later amended resulting in an extension of time to correct construction error did not make it invalid under this section, and therefore did not affect employee's right to recover salary upon being fired, since extension of time was not contemplated in the original contract; fact that employee had worked seven weeks also removed contract from bar of statute under doctrine of part per-

formance. Fox v. Fifth West, Inc., 153 M 95, 454 P 2d 612.

Buyer's tender of payment and a conveyance to be executed by seller did not constitute such performance or memorandum as to take an oral agreement to sell land out of the operation of this section, where seller did not accept the tender or execute the conveyance. Myers v. Bendewald, — M —, 502 P 2d 412.

CHAPTER 1501—EVIDENCE—PRODUCTION OF—SUBPOENAS

93-1501-1. (10616) Evidence to be produced, by whom.

Burden of Proof

Plaintiff had burden of proof that disputed range rights were based on land other than that purchased jointly by plaintiff and defendant and failure so to prove defeated plaintiff's claim that defendants were not entitled to one-half the appraised value of the range rights. Watson v. Barnard, 155 M 75, 469 P 2d 539.

Negligence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to come forth with sufficient evidence to show the lack of due care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

Where plaintiff alleged giving of notice which defendant denied, notice or lack thereof was put in issue and plaintiff had burden of proof. Glacier General Assurance Co. v. State Farm Mutual Automobile Ins. Co., 150 M 452, 436 P 2d 533.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. Baker Nat. Bank v. Lestar, 153 M 45, 453 P 2d 774.

Res Ipsa Loquitur

Res ispa loquitur does not relieve the plaintiff of the burden of proving actionable negligence, nor is it sufficient that he show that he was injured and that the instrumentality which caused his injury was in the control of the defendant; he must also show that the accident would not have occurred in the ordinary course of events if the defendant had exercised due care. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

CHAPTER 1901—EVIDENCE—GENERAL RULES OF EXAMINATION

93-1901-2. (10660) Witness not under examination may be excluded.

Ignorance of Order

Fact that witness did not hear court's order to absent himself from courtroom and, although present during part of another witness's testimony, was allowed to testify, was not reversible error in absence of showing that defendant was prejudiced. State v. Love, 151 M 190, 440 P 2d 275.

Officers As Witnesses

Statute does not apply to police officers called as state's witnesses, so that court properly denied defendant's motion to exclude police officers from courtroom before their time to testify. State v. Fitzpatrick, 149 M 400, 427 P 2d 300.

93-1901-6. (10664) When witness may refresh memory from notes.

Pretrial Statement

Trial court did not abuse its discretion in permitting state's witness to testify after he had refreshed memory by referring to a statement he had made after shooting incident, in absence of prejudice to defendant and in light of fact that witness acknowledged that he made statement after incident, that he recognized statement and that signature on statement was his. State v. Gallagher, 151 M 501, 445 P 2d 45.

References

State v. Jones, 143 M 155, 387 P 2d 913.

93-1901-7. (10665) Cross-examination, as to what.

Prior Inconsistent Pleading

Complaint filed in previous action by father alleging boy's leg was 75% permanently disabled, signed under oath by father, was properly admitted on cross-examination of father who had previously testified otherwise. Tigh v. College Park Realty Co., 149 M 358, 427 P 2d 57.

93-1901-11. (10668) How impeached.

Contradictory Evidence

Employer's testimony that a truck could not be driven more than 35 to 38 miles per hour could be impeached by testimony that witness had, on a prior occasion, seen the truck traveling at 65 to 70 miles per hour. Seder v. Peter Kiewit Sons' Co., 156 M 322, 479 P 2d 448.

After defendant testified that over the past six years he had "only" been picked up five or six times for driving while his license was suspended, prosecution could properly show the remainder of his record, which included fifteen apprehensions for driving without a license, twelve speeding charges, six violations of basic rule, one display of a fictitious driving license, one improper lane usage, and two excessive muffler noise charges. State v. Deshner, 158 M 188, 489 P 2d 1290.

References

State v. Tagge, 143 M 289, 388 P 2d 792; State v. Tully, 148 M 166, 418 P 2d 549, 550.

93-1901-12. (10669) Impeachment by evidence of declarations.

Prior Inconsistent Pleading

Complaint filed in previous action by father alleging that boy's leg was 75% permanently disabled, signed by father under oath, was properly admitted for purpose of impeaching father who had previously testified otherwise. Tigh v. College Park Realty Co., 149 M 358, 427 P 2d 57.

References

State v. Lagge, 143 M 289, 388 P 2d 792.

93-1901-13. (10670) Evidence of good character—when allowed.

Constructive Fraud

In action for damages by purchasers of land against sellers and their real estate agent, based on a theory of constructive fraud, the character of the defendants was not in issue and trial court's limitation of number of character witnesses was not prejudicial to defendant. Goggans v. Winkley, — M —, 495 P 2d 594.

93-1901-14. (10671) Writing shown to witness may be inspected, etc.

Pretrial Statement of Defendant

The trial court did not err in permitting state's witness to read entire statement of defendant wherein defendant was warned of constitutional rights since it was material evidence that defendant's constitutional rights and waiver thereof were clearly and understandably enunciated to defendant. State v. Lucero, 151 M 531, 445 P 2d 731.

CHAPTER 2001—EVIDENCE—EFFECT OF

93-2001-1. (10672) Jury judges of effect of evidence, etc.

Subdivision 3

Conviction would not be reversed for giving of instruction based on statute but including words "except in so far as it may be corroborated by other and credible evidence in the case," in absence of specific showing of prejudice. State v. Rollins, 149 M 481, 428 P 2d 462.

Subdivision 4—Accomplice's Testimony

Where the court gave a defendant's instruction quoting this section verbatim in a criminal case, it may be assumed that the instruction was considered by the jury in weighing the evidence. State v. Barick, 143 M 273, 389 P 2d 170.

Subdivisions 6 and 7

In action by administrator of estate of deceased partner against surviving partners to recover assets transferred by the deceased during his last illness, evidence that deceased had a half interest in the partnership cattle and failure of defendants to produce any of the partnership records at the trial in the lower court, sustained finding that heir of deceased had overcome the prima facie showing of one-third interest in the partnership cattle arising from the recording of the brand in name of three persons. Marshall v. Minlschmidt, 148 M 263, 419 P 2d 486, 491.

References

State v. Lagge, 143 M 289, 388 P 2d 792; State v. Romero, 146 M 77, 404 P 2d 500.

CHAPTER 2201—EVIDENCE—RULES IN PARTICULAR CASES

Section 93-2201-7. Settlement of claims—legislative policy.
93-2201-8. "Person" defined.
93-2201-9. Voluntary partial payment of claim not an admission of fault, waiver or release.
93-2201-10. Parts of act not severable.

93-2201-1. (10680) An offer equivalent to tender.

References

Schultz v. Campbell, 147 M 439, 413 P 2d 879.

93-2201-3. (10682) Objections to tender must be specified.

Waiver of Tender

Ordinarily, a check is not a tender, but it may be as effective as a tender of currency if there is no timely objection to the form of tender, or if the objection is waived. Schultz v. Campbell, 147 M 439, 413 P 2d 879.

93-2201-4. (10683) Rules for construing description of lands.

Monuments Paramount

A resurvey which paid no attention to artificial monuments relied upon in deeds and used by the owners of the property could not disrupt or change existing property lines. Buckley v. Laird, 158 M 483, 493 P 2d 1070.

93-2201-7. Settlement of claims—legislative policy. The legislative assembly hereby declares that the health, welfare and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislative assembly further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his property could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

History: En. Sec. 1, Ch. 222, L. 1973.

Title of Act

An act to provide for the voluntary payment of personal injury or property damage claims without such payment constituting an admission of liability.

93-2201-8. "Person" defined. As used in this act, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

History: En. Sec. 2, Ch. 222, L. 1973.

93-2201-9. Voluntary partial payment of claim not an admission of fault, waiver or release. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability, or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence. The fact of any such voluntary payment, or its

amount, shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage or otherwise. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against such judgment, and shall be deductible from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments, or on whose behalf such payments were made, is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

History: En. Sec. 3, Ch. 222, L. 1973.

93-2201-10. Parts of act not severable. It is the intent of the legislative assembly that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

History: En. Sec. 4, Ch. 222, L. 1973.

CHAPTER 2501—QUESTIONS OF FACT AND LAW—DECISION OF

93-2501-2. (10699) Questions of law addressed to the court.

Interpretation of Lease

Interpretation of lease of building was matter for court in dispute between lessor and lessee. Solich v. Hale, 150 M 358, 435 P 2d 883.

CHAPTER 2601—REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968)

Section 93-2601-41. Purposes.
93-2601-42. Definitions.
93-2601-43. Remedies additional to those now existing.
93-2601-44. Extent of duties of support.
93-2601-45. Interstate rendition.
93-2601-46. Conditions of interstate rendition.
93-2601-47. Choice of law.
93-2601-48. Remedies of state or political subdivision furnishing support.
93-2601-49. How duties of support enforced.
93-2601-50. Jurisdiction.
93-2601-51. Contents and filing of petition for support—venue.
93-2601-52. Officials to represent obligee.
93-2601-53. Petition for a minor.
93-2601-54. Duty of initiating court.
93-2601-55. Costs and fees.
93-2601-56. Jurisdiction by arrest.
93-2601-57. State information agency.
93-2601-58. Duty of the court and officials of this state as responding state.
93-2601-59. Further duties of court and officials in the responding state.
93-2601-60. Hearing and continuance.
93-2601-61. Immunity from criminal prosecution.

93-2601-62. Evidence of husband and wife.
93-2601-63. Rules of evidence.
93-2601-64. Order of support.
93-2601-65. Responding court to transmit copies to initiating court.
93-2601-66. Additional powers of responding court.
93-2601-67. Paternity.
93-2601-68. Additional duties of responding court.
93-2601-69. Additional duty of initiating court.
93-2601-70. Proceedings not to be stayed.
93-2601-71. Application of payments.
93-2601-72. Effect of participation in proceeding.
93-2601-73. Intrastate application.
93-2601-74. Appeals.
93-2601-75. Additional remedies.
93-2601-76. Registration.
93-2601-77. Registry of foreign support orders.
93-2601-78. Official to represent obligee.
93-2601-79. Registration procedure—notice.
93-2601-80. Effect of registration—enforcement procedure.
93-2601-81. Uniformity of interpretation.
93-2601-82. Short title.

93-2601-1 to 93-2601-40. Repealed.

Repeal

Sections 93-2601-1 to 93-2601-40 (Sec. 1, Ch. 208, L. 1961), known as the "Uniform Reciprocal Enforcement of Support Act," were repealed by Sec. 44, Ch. 237, Laws 1969.

93-2601-41. Purposes. The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: En. Sec. 1, Ch. 237, L. 1969.

Compiler's Notes

Section 93-2601-41 to 93-2601-44 comprise Part I of this chapter, as enacted by Ch. 237, Laws 1969, entitled "General provisions."

NOTE.—The following states have enacted the Revised Uniform Reciprocal Enforcement of Support Act: Arizona, Idaho, Illinois, Kansas, Nevada, New Mexico, North Dakota, Wisconsin.

Title of Act

An act adopting the Uniform Reciprocal Enforcement of Support Act as revised by the National Conference of Commissioners on Uniform State Laws in 1968; providing additional remedies for enforcement of duties of support; providing for criminal enforcement by extradition; providing for civil enforcement where parties reside in different states or in different counties of Montana; providing for registration and enforcement of foreign support orders and support orders issued in different counties of Montana; providing for the resolution of paternity and visitation rights if contested, and for appeals; and repealing sections 93-2601-1 through 93-2601-40, R. C. M. 1947.

93-2601-42. Definitions. (a) "Court" means the district court of this state and when the context requires means the court of any other state as defined in a substantially similar reciprocal law.

(b) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this act.

(d) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(e) "Law" includes both common and statutory law.

(f) "Obligee" means a person including a state or political subdivision to whom a duty of support is owed or a person including a state or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "Register" means to file in the registry of foreign support orders.

(j) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(k) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(l) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(m) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En Sec. 2, Ch. 237, L. 1969.

93-2601-43. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969.

93-2601-44. Extent of duties of support. Duties of support arising under the law of this state, when applicable under section 7 [93-2601-47], bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969.

93-2601-45. Interstate rendition. The governor of this state may (1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this act apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: En. Sec. 5, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-45 and 93-2601-46 comprise Part II of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Criminal enforcement."

93-2601-46. Conditions of interstate rendition. (a) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969.

93-2601-47. Choice of law. Duties of support applicable under this act are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: En. Sec. 7, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-47 to 93-2601-74 comprise Part III of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Civil enforcement."

93-2601-48. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: En. Sec. 8, Ch. 237, L. 1969.

93-2601-49. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: En. Sec. 9, Ch. 237, L. 1969.

93-2601-50. Jurisdiction. Jurisdiction of any proceeding under this act is vested in the district court.

History: En. Sec. 10, Ch. 237, L. 1969.

93-2601-51. Contents and filing of petition for support—venue. (a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(b) The petition may be filed in the appropriate court of any state in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History: En. Sec. 11, Ch. 237, L. 1969.

93-2601-52. Officials to represent obligee. If this state is acting as an initiating state the prosecuting attorney upon the request of the court, a state department of welfare, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this act. If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 12, Ch. 237, L. 1969.

93-2601-53. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: En. Sec. 13, Ch. 237, L. 1969.

93-2601-54. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property it shall so certify and cause three (3) copies of the petition and its certificate and one (1) copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: En. Sec. 14, Ch. 237, L. 1969.

93-2601-55. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: En. Sec. 15, Ch. 237, L. 1969.

93-2601-56. Jurisdiction by arrest. If the court of this state believes that the obligor may flee it may

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: En. Sec. 16, Ch. 237, L. 1969.

93-2601-57. State information agency. (a) The state department of public welfare is designated as the state information agency under this act, [and] it shall

(1) compile a list of the courts and their addresses in this state having jurisdiction under this act and transmit it to the state information agency of every other state which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other state information agencies;

(2) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this act; and

(3) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other states.

(b) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to co-operate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to co-operate, and requests made to the social security administration as permitted by the Social Security Act as amended.

(c) After the deposit of three (3) copies of the petition and certificate and one (1) copy of the act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the attorney general who may undertake the representation.

History: En. Sec. 17, Ch. 237, L. 1969.

Compiler's Notes

The compiler inserted the bracketed word "and" in subsection (a).

The Social Security Act, as amended, referred to in subsection (b) of this section, is compiled in the United States Code as Tit. 42, sec. 1306.

93-2601-58. Duty of the court and officials of this state as responding state. (a) After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 18, Ch. 237, L. 1969.

93-2601-59. Further duties of court and officials in the responding state. (a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of

more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

History: En. Sec. 19, Ch. 237, L. 1969.

93-2601-60. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: En. Sec. 20, Ch. 237, L. 1969.

93-2601-61. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: En. Sec. 21, Ch. 237, L. 1969.

93-2601-62. Evidence of husband and wife. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 22, Ch. 237, L. 1969.

93-2601-63. Rules of evidence. In any hearing for the civil enforcement of this act the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (section 27 [93-2601-67]) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty

of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: En. Sec. 23, Ch. 237, L. 1969.

93-2601-64. Order of support. If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this act shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: En. Sec. 24, Ch. 237, L. 1969.

93-2601-65. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: En. Sec. 25, Ch. 237, L. 1969.

93-2601-66. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: En. Sec. 26, Ch. 237, L. 1969.

93-2601-67. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

History: En. Sec. 27, Ch. 237, L. 1969.

93-2601-68. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: En. Sec. 28, Ch. 237, L. 1969.

93-2601-69. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: En. Sec. 29, Ch. 237, L. 1969.

93-2601-70. Proceedings not to be stayed. A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: En. Sec. 30, Ch. 237, L. 1969.

93-2601-71. Application of payments. A support order made by a court of this state pursuant to this act does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: En. Sec. 31, Ch. 237, L. 1969.

93-2601-72. Effect of participation in proceeding. Participation in any proceeding under this act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: En. Sec. 32, Ch. 237, L. 1969.

93-2601-73. Intrastate application. This act applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor

owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: En. Sec. 33, Ch. 237, L. 1969.

93-2601-74. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may

(a) perfect an appeal to the proper appellate court if the support order was issued by a court of this state, or

(b) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: En. Sec. 34, Ch. 237, L. 1969.

93-2601-75. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: En. Sec. 35, Ch. 237, L. 1969.

Compiler's Notes

Sections 93-2601-75 to 93-2601-82 comprise Part IV of this chapter, as enacted by Ch. 237, Laws 1969, entitled "Registration of foreign support orders."

93-2601-76. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: En. Sec. 36, Ch. 237, L. 1969.

93-2601-77. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: En. Sec. 37, Ch. 237, L. 1969.

93-2601-78. Official to represent obligee. If this state is acting either as a rendering or a registering state the prosecuting attorney upon the request of the court, a state department of welfare, a county commissioner, or other local welfare official shall represent the obligee in proceeding under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 38, Ch. 237, L. 1969.

93-2601-79. Registration procedure — notice. (a) An obligee seeking to register a foreign support order in a court of this state shall

transmit to the clerk of the court (1) three (3) certified copies of the order with all modifications thereof, (2) one (1) copy of the reciprocal enforcement of support act of the state in which the order was made, and (3) a statement verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: En. Sec. 39, Ch. 237, L. 1969.

93-2601-80. Effect of registration — enforcement procedure. (a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: En. Sec. 40, Ch. 237, L. 1969.

93-2601-81. Uniformity of interpretation. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 41, Ch. 237, L. 1969.

93-2601-82. Short title. This act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

History: En. Sec. 42, Ch. 237, L. 1969.

Separability Clause

Section 43 of Ch. 237, Laws 1969 read "If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

Repealing Clause

Section 44 of Ch. 237, Laws 1969 read "Sections 93-2601-1 through 93-2601-40, R. C. M. 1947, are repealed."

CHAPTER 2701

MONTANA RULES OF CIVIL PROCEDURE

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule

4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction.

(2) Acquisition of Jurisdiction.

C. PROCESS.

(1) Summons—Issuance.

(2) Summons—Form.

D. SERVICE.

(1) By Whom Served.

(2) Personal Service Within the State.

(3) Personal Service Outside the State.

(4) Other Service.

(5) Service by Publication—When Permitted—Effect—Manner—Proof.

(a) When Permitted.

(b) Effect of Service by Publication.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication.

(d) Number of Publications.

(e) Mailing Summons and Complaint.

(f) Time When First Publication or Service Outside State Must Be Made.

(g) When Service by Publication or Outside State Complete.

(h) Additional Information to Be Published.

(6) (a) Service on Secretary of State.

(b) [Continuance to Allow Defense.]

(7) Amendment.

(8) Proof of Service.

(9) Contents of Affidavit of Service.

(10) Procedure Where Only Part of Defendants Are Served.

5. Service and filing of pleadings and other papers.

(a) SERVICE—WHEN REQUIRED.

6. Time.

(b) ENLARGEMENT.

III. PLEADINGS AND MOTIONS

8. General rules of pleading.
(b) DEFENSES—FORM OF DENIALS.
(c) AFFIRMATIVE DEFENSES.

12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.
(b) HOW PRESENTED.
(d) PRELIMINARY HEARINGS.
(g) CONSOLIDATION OF DEFENSES IN MOTION.
(h) WAIVER OR PRESERVATION OF CERTAIN DEFENSES.

13. Counterclaim and cross-claim.
(h) JOINDER OF ADDITIONAL PARTIES.

15. Amended and supplemental pleadings.
(c) RELATION BACK OF AMENDMENTS.

IV. PARTIES

17. Parties plaintiff and defendant—Capacity.
(a) REAL PARTY IN INTEREST.

18. Joinder of claims and remedies.
(a) JOINDER OF CLAIMS.

19. Joinder of persons needed for just adjudication.
(a) PERSONS TO BE JOINED IF FEASIBLE.
(b) DETERMINATION BY COURT OF WHENEVER JOINDER NOT FEASIBLE.
(c) PLEADING REASONS FOR NONJOINDER.
(d) EXCEPTION OF CLASS ACTIONS.

20. Permissive joinder of parties.
(a) PERMISSIVE JOINDER.

23. Class actions.
(a) PREREQUISITES TO A CLASS ACTION.
(b) CLASS ACTIONS MAINTAINABLE.
(c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED—NOTICE—JUDGMENT—ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.
(d) ORDER IN CONDUCT OF ACTIONS.
(e) DISMISSAL OR COMPROMISE.
(f) SECURITY FOR COSTS.

23.1. Derivative actions by shareholders.

23.2. Actions relating to unincorporated associations.

24. Intervention.
(a) INTERVENTION OF RIGHT.
(c) PROCEDURE.

V. DEPOSITIONS AND DISCOVERY

26. Depositions pending action.
(e) OBJECTIONS TO ADMISSIBILITY.
28. Persons before whom depositions may be taken.
(b) IN FOREIGN COUNTRIES.
(e) DEPOSITION TO BE TAKEN IN SISTER STATES AND FOREIGN COUNTRIES FOR USE IN THIS STATE.
30. Depositions upon oral examination.
(f) CERTIFICATION AND FILING BY OFFICER—COPIES—NOTICE OF FILING.
33. Interrogatories to parties.
35. Physical and mental examination of persons.
(b) REPORT OF FINDINGS.
(2) Waiver of Privilege.

VI. TRIALS

41. Dismissal of actions.
(b) INVOLUNTARY DISMISSAL—EFFECT THEREOF.
(e) FAILURE TO SERVE SUMMONS.
43. Evidence.
(f) INTERPRETERS.
44. Proof of official record.
(a) AUTHENTICATION.
(1) Domestic.
(2) Foreign.
(b) LACK OF RECORD.
(c) OTHER PROOF.
44.1. Determination of foreign law.
46. Exceptions unnecessary.
47. Jurors.
(b) MANNER OF SELECTION AND ORDER OF EXAMINATION OF JURORS.
50. Motion for a directed verdict and for judgment notwithstanding the verdict.
(a) MOTION FOR DIRECTED VERDICT—WHEN MADE, EFFECT.
(b) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.
(c) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—CONDITIONAL RULINGS ON GRANT OF MOTION.
(d) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—DENIAL OF MOTION.
52. Findings by the court.
(a) EFFECT.
(b) AMENDMENT.

VII. JUDGMENT

55. Default.
(b) JUDGMENT.
(2) By the Court.
56. Summary judgment.
(c) MOTION AND PROCEEDINGS THEREON.
59. New trials—Amendment of judgments.
(a) GROUNDS.
(b) TIME FOR MOTION.
(c) TIME FOR SERVING AFFIDAVITS.
(d) TIME FOR HEARING ON MOTION.
(e) ON INITIATIVE OF COURT.
(f) MOTION TO ALTER OR AMEND A JUDGMENT.
60. Relief from judgment or order.
(b) MISTAKES—INADVERTENCE—EXCUSABLE NEGLECT —NEWLY DISCOVERED EVIDENCE—FRAUD, ETC.
(c) TIME FOR HEARING AND DETERMINING MOTIONS.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

68. Offer of judgment.

IX. APPEALS

72. Appeal from a district court to the supreme court.

X. DISTRICT COURTS AND CLERKS

77. District courts and clerks.
(e) TRANSMITTAL OF FILE ON REMOVAL.

XI. GENERAL PROVISIONS

86. Effective date—Statutes superseded.
(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
(b) STATUTES SUPERSEDED.

TABLE B. List of rules superseding statutes.
C. List of statutes superseded by rules.

I. SCOPE OF RULES—ONE FORM OF ACTION

Rule 1. Scope of rules.

References

Spaberg v. Johnson, 143 M 500, 392 P 2d 78.

II. COMMENCEMENT OF ACTION—SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Rule 4. Persons subject to jurisdiction—Process—Service.
5. Service and filing of pleadings and other papers.
6. Time.

Rule 4. Persons subject to jurisdiction—Process—Service.

A. DEFINITION OF PERSON. As used in this rule, the word "person," whether or not a citizen or resident of this state and whether or not organized under the laws of this state, includes an individual whether operating in his own name or under a trade name; an individual's agent or personal representative; a corporation; a business trust; an estate; a trust; a partnership; an unincorporated association; and any two or more persons having a joint or common interest or any other legal or commercial entity.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without change.

B. JURISDICTION OF PERSONS.

(1) Subject to Jurisdiction. All persons found within the state of Montana are subject to the jurisdiction of the courts of this state. In addition, any person is subject to the jurisdiction of the courts of this state as to any claim for relief arising from the doing personally, through an employee, or through an agent, of any of the following acts:

(a) the transaction of any business within this state;

(b) the commission of any act which results in accrual within this state of a tort action;

(c) the ownership, use or possession of any property, or of any interest therein, situated within this state;

(d) contracting to insure any person, property or risk located within this state at the time of contracting;

(e) entering into a contract for services to be rendered or for materials to be furnished in this state by such person; or

(f) acting as director, manager, trustee, or other officer of any corporation organized under the laws of, or having its principal place of business within this state, or as executor or administrator of any estate within this state.

(2) Acquisition of Jurisdiction. Jurisdiction may be acquired by our courts over any person through service of process as herein provided; or by the voluntary appearance in an action by any person either personally, or through an attorney, or through any other authorized officer, agent or employee.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment restated this rule without apparent change.

Contracts

Although primary negotiations for sale of membership in stock exchange were had in Utah, locus of contract was in Montana and jurisdiction was acquired under this section in view of fact that negotiations continued via telephone and mail in Montana, that delivery was contemplated and would be made in Montana, and that purchase money mortgage or equivalent lien would follow subject matter of contract to Montana. State ex rel. Goff v. District Court, 157 M 495, 487 P 2d 292.

Nonresident Corporation Jurisdiction

Montana court acquired in personam jurisdiction over nonresident corporation under portions of rule subjecting persons, who transact any business within Montana and persons entering into contracts for services to be rendered in Montana, to jurisdiction of Montana notwithstanding

corporation's contention that most of its Montana business and services it rendered and materials it furnished were within federal enclave known as Malstrom Air Force Base. Swanson Painting Co. v. Painters Local Union No. 260, 391 F 2d 523.

In products liability suit instituted by resident, state properly exercised in personam jurisdiction over nonresident manufacturer under long-arm provision relating to commission of act resulting in accrual within state of tort action notwithstanding manufacturer's contention that action offended due process requirements of "fundamental fairness" and "minimum contacts"; action was proper despite facts that defendant maintained no office in state, had no representative resident in or assigned to Montana, received orders from wholesale or retail outlets in Illinois, and had Montana business consisting of less than one-half of one per cent of its total business where foreign corporation deliberately engaged in a policy which was intended to put so much of its product into the state as the market would absorb. Bullard v. Rhodes Pharmacal Co., 263 F Supp 79, distinguished in 341 F Supp 560, 562.

Long-arm jurisdiction obtained over nonresident defendant for commission of act which results in accrual within state of tort action and for entering into contract for services to be rendered or for materials to be furnished in state did not violate due process requirements as embodied in "minimum contacts" test in view of evidence that defendant manufactured products for national and interstate market; that valve was ordered by specifications; that defendant knew at time of shipment that it would be used in Montana; that defendant knew that negligent manufacture might constitute a serious hazard; and that the explosion allegedly resulting from defective valve occurred in Montana. Continental Oil Co. v. Atwood & Morrill Co., 265 F Supp 692, distinguished in Yules v. General Motors Corp., 297 F Supp 674.

Exercise of long-arm jurisdiction over nonresident defendant for commission of act which results in accrual within state of tort action did not violate due process requirements and was within "minimum contacts" rule in view of evidence that nonresident manufacturer knew that cableway it manufactured would be used on construction site in state and that it sent several of its employees to state to inspect cableway. Hartung v. Washington Iron Works, 267 F Supp 408.

Montana properly exercised in personam jurisdiction over nonresident assignee of retail installment sales contract in suit for assignee's conversion of truck by repossessing it under provision relating to commission of any act which results in accrual within state of tort action; action was proper notwithstanding assignee's due process contentions in that his activities in Montana were insufficient in view of evidence that when contract was assigned, the assignee knew vehicle would be used throughout United States; that assignee did not object when truck was moved to Montana and thereafter accepted payments mailed from Montana; that following accident in South Dakota, vehicle was removed to Montana at assignee's request; and that assignee had its agent, a wholly owned subsidiary, repossess truck in Montana and take necessary steps to obtain title to it. Boyt v. Emmco Ins. Co., 271 F Supp 366.

A corporation is not "found within the state of Montana" unless it has agents or officers upon whom process may be served or unless its business has been of such character and extent as to warrant the inference that it has subjected itself to the jurisdiction of the state; such an inference cannot arise by the mere solicitation of business and shipment of product into the state and occasional trips by an officer or agent into the state for solicitation purposes. McIntosh v. Heil Co., 350 F Supp 866.

Retroactive Application

This rule applied to act of alleged malpractice occurring in Montana prior to effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could be served properly with process, under Rule 4D(3), in California. State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 111.

The giving effect to the service of summons provisions of this rule, when the operative facts of the case to which the rule was applied had taken place prior to the effective date of the Montana Rules of Civil Procedure as set out in Rule 86 (a) was not a prohibited retroactive application of this rule within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

Tort Accruing

Swedish corporation which sold ammunition throughout the United States through an American distributor subjected itself to Montana jurisdiction when defective ammunition sold in Idaho resulted in injury in Montana. Scanlan v. Norma Projektil Fabrik, 345 F Supp 292.

Transacting Business

State had jurisdiction over person of nonresident defendant who placed purchase order directly with a Montana wholesaler once and paid by direct check

to the wholesaler on several occasions, even though defendant had never personally met plaintiff nor been in the state. Prentice Lumber Co. v. Spahn, 156 M 68, 474 P 2d 141.

Personal services of employee doctor of hospital in Minnesota, rendered to plaintiff in Montana at plaintiff's convenience and incidental to employee's personal journey to Montana, was not sufficient to bring hospital under jurisdiction of Montana for a tort occurring in Minnesota. Aylstock v. Mayo Foundation, 341 F Supp 560.

Law Review

Ganz, "Doing Business" in Illinois as a Basis of Jurisdiction Over Nonresidents—Due Process and Contracts," Vol. 1, No. 4 Illinois Continuing Legal Education 75 (October 1963).

C. PROCESS.

(1) Summons—Issuance. Upon the filing of the complaint, the clerk shall forthwith issue a summons, and shall deliver the summons either to the sheriff of the county in which the action is filed, or to the person who is to serve it, or upon request, to the attorney for said party who shall thereafter be responsible to see that the summons is served in the manner prescribed by these rules. Upon request, separate or additional summons shall issue against any parties designated in the original action, or against any additional parties who may be brought into the action.

(2) Summons—Form. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address, and the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint. In an action brought to quiet title to real estate, there shall be added to the foregoing, the following: "This action is brought for the purpose of quieting title to land situated in _____ County, Montana, and described as follows: (Here insert descriptions of land.)." For exceptions to this form of summons see 4D(4) "Other Service," set forth hereinafter.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The 1965 amendment made minor changes in the caption to paragraph (2) and in references to R. C. M. 1947.

The amendment of September 29, 1967 substituted the last sentence in subdivision (2) for former sentence requiring compliance with sections 84-4165 and 93-6228 and with provisions of Rule 4D(5)(h); and made minor changes in phraseology.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This amendment, together with the change in 4D(4), is intended to make it clear that there is no conflict between the requirements of the rules with respect to summons for publication and the requirements of section 93-6228, and that section 93-6228 governs actions to establish title to property granted to heirs of deceased entryman but has no application to other actions.

D. SERVICE.

(1) By Whom Served. Service of all process shall be made by a sheriff of the county where the party to be served is found, by his deputy, by a constable authorized by law, or by any other person over the age of

21 not a party to the action, except that a subpoena may be served as provided in Rule 45.

(2) Personal Service Within the State. The summons and complaint shall be served together, unless two or more defendants are residents of the same county, in which case a copy of the complaint need only be served upon one of such defendants. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(a) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given.

(b) Upon a minor over the age of 14 years, by delivering a copy of the summons and complaint to him personally, and by leaving a copy thereof at his dwelling house or usual place of abode with some adult of suitable discretion then residing therein, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process.

(c) Upon a minor under the age of 14 years, by delivering a copy of the summons and complaint to his guardian, if he has one within the state, and if not, then to his father or mother or other person or agency having his care or control, or with whom he resides, or if service cannot be made upon any of them, then as provided by order of the court.

(d) Upon a person who has been adjudged of unsound mind by a court of this state, or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to his guardian, if there be a guardian residing in this state appointed and acting under the laws of this state. If there be no such guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind, but has not been so adjudged by a court of this state, such party may be brought into court by service of process personally upon him. The court may also stay any action pending against a person on learning that such person is of unsound mind.

(e) Upon a domestic corporation, partnership or other unincorporated association, or upon a foreign corporation, partnership or other unincorporated association, established by the laws of any other state or country, and having a place of business within this state or doing business herein either permanently or temporarily, or which was doing business herein either permanently, or temporarily at the time the claim for relief accrued: (i) by delivering a copy of the summons and complaint to an officer, director, superintendent or managing or general agent, or partner, or associate for such corporation, partnership, or association; or by leaving such copies at the

office or place of business of the corporation, partnership, or association within the state with the person in charge of such office; or (ii) by delivering a copy of the summons and complaint to the registered agent of said corporation named on the records of the Secretary of State, or to any other agent or attorney in fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney in fact is one designated by statute to receive service, such further notice as the statute requires shall also be given; or (iii) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then service may be made by leaving a copy of the summons and complaint at any office of the corporation, partnership, or unincorporated association within this state with the person in charge of such office; or (iv) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy thereof to any one of the persons who have become trustees for the corporation and its stockholders or members.

(f) When a claim for relief is pending in any court of this state against a corporation organized under the laws of this state, or against a corporation organized under the laws of any other state or country, that has filed a copy of its charter in the office of the secretary of state of Montana and qualified to do business in Montana; or against a corporation organized under the laws of any other state or country which is subject to the jurisdiction of the courts of this state under the provisions of Rule 4B above, even though such corporation has never qualified to do business in Montana; or against a national banking corporation which, through insolvency or lapse of charter, has ceased to do business in Montana; and none of the persons designated in D(2)(e) immediately above can with the exercise of reasonable diligence be found within Montana, the party causing summons to be issued shall exercise reasonable diligence to ascertain the last known address of any such person. Upon the filing with the clerk of court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in D(2)(e) can after due diligence be found within Montana upon whom service of process can be made, and reciting the last known address of any such person, or reciting that after the exercise of reasonable diligence no such address for any such person could be found, and there has also been deposited with the said clerk the sum of $5.00 to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive said service, then the clerk of court shall issue an order directing process to be served upon the secretary of state of the state of Montana or, in his absence from his office, upon the deputy secretary of state of the state of Montana. Such affidavit shall be sufficient evidence of the diligence of inquiry made by affiant, if the affidavit recites that diligent inquiry was made, and the affidavit need not detail the facts constituting such inquiry. Whenever service is also to be made through publication as provided in 4D(5), or upon other persons as provided in 4D(6), the affidavit herein required may be

combined in the same instrument with the affidavit required under 4D(5)(c) and 4D(6). The said clerk of court shall then mail to the secretary of state the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service, to the office of the secretary of state. The secretary of state shall mail copy of the summons and complaint by certified or registered mail with a return receipt requested to the last known address of any of the persons designated in D(2)(e) above, if known, or, if none such is known and it is a corporation not organized in Montana, to the secretary of state of the state in which such corporation was originally incorporated, if known; and the secretary of state shall make his return as hereinafter provided under Rule 4D(6). When service is so made, it shall be deemed personal service on such corporation, and the said secretary of state, or his deputy when the secretary is absent from his office, is hereby appointed agent of such corporation for service of process in cases hereinbefore mentioned. In any action where due diligence has been exercised to locate and serve any of the persons designated in D(2)(e) above, service shall be deemed complete upon said corporation regardless of the receipt of any return receipt or advice of refusal of the addressee to receive the process mailed, as is hereinafter required by 4D(6); provided, however, that except in those actions where any of the persons designated in D(2)(e) above have been located and served personally as hereinabove provided, then service by publication shall also be made as provided hereafter in 4D(5)(d) and 4D(5)(h); the first publication must be made within sixty days from the date the original summons is mailed to the secretary of state as herein provided, and if said first publication is not so made, the action shall be deemed dismissed as to any such party intended to be served by such publication; and service shall be complete upon the date of the last publication of summons.

When service of process is made as herein provided, and there is no appearance thereafter made by any attorney for such corporation, service of all other notices required by law to be served in such action may be served upon the secretary of state.

(g) Upon a city, village, town, school district, county, or public agency or board of any such public bodies, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor or head of the legislative department thereof.

(h) Upon the state, or any state board or state agency, by delivering a copy of the summons and complaint to the governor, or to any member of such state board or state agency, and also by delivering an additional copy of the summons and complaint to the attorney general.

(i) Upon an estate by delivering a copy of the summons and complaint to the personal representative thereof; upon a trust by delivering a copy of the summons and complaint to any trustee thereof.

(3) Personal Service Outside the State. Where service upon any person cannot, with due diligence, be made personally within this state, service of summons and complaint may be made by service outside this state in the manner provided for service within this state, with the same force and effect as though service had been made within this state. Where service by publication is permitted as hereinafter provided, personal service of a summons and complaint upon the defendant out of the state shall be equivalent to and shall dispense with the procedures and the publication and mailing provided for hereafter in 4(5)(c), 4(5)(d) and 4(5)(e) of this rule.

(4) Other Service. All process in any form of action shall be served in the manner specified in this rule with the exception that whenever a statute of this state or an order of the court or a citation by the court made pursuant thereto provides for the service of a notice or of an order or of a citation in lieu of summons upon any person, service shall be made under the circumstances and in the manner prescribed by the statute or order or citation; and with the further exception that all persons are required to comply with the provisions hereafter prescribed in D(5)(h), and with the provisions of sections 40-2819, 40-3405, 40-3406, 40-3423, 40-3424, 93-6228, 93-6229, 93-6230, and 93-6232, R. C. M. 1947, when the action pertains to the provisions of such sections.

(5) Service by Publication — When Permitted — Effect — Manner — Proof.

(a) When Permitted. A defendant, whether known or unknown, who has not been served under the foregoing subsections of this rule can be served by publication in the following situations only:

(i) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest therein. This subsection shall apply whether any such defendant is known or unknown.

(ii) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real or personal property within this state.

(iii) When the action is for divorce or for annulment of marriage of a resident of this state or for modification of a decree of divorce granted by a court of this state.

(iv) When the defendant has property within this state which has been attached or has a debtor within this state, who has been garnished. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subsections (5)(a)(i), (5)(a)(ii), and (5)(a)(iii) herein.

(b) Effect of Service by Publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree which will adjudicate any interest of such defendant in the status, property, or thing acted upon, but it may not bind the de-

fendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of Pleading and Affidavit for Service by Publication; and Order for Publication. Before service of the summons by publication is authorized in any case, there shall be filed with the clerk in the district court of the county in which the action is commenced (i) a pleading setting forth a claim in favor of the plaintiff and against the defendant in one of the situations defined in (5)(a) above; and (ii) in situations defined in (5)(a)(i), (5)(a)(ii), (5)(a)(iii), upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating that such defendant resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons; or, if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can, after due diligence, be found within the state; or, if the defendant is an unknown claimant, by showing that he has made diligent search and inquiry for all persons who claim, or might claim any right, title, estate, or interest in, or lien, or encumbrance upon, such property, or any thereof, adverse to plaintiff's ownership, or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any right of dower, inchoate or accrued, and that he has specifically named as defendants in such action all such persons whose names can be ascertained; such affidavit shall be sufficient evidence of the diligence of any inquiry made by the affiant, if the affidavit recite the fact that diligent inquiry was made, and it need not detail the facts constituting such inquiry, and if desired, it may be combined in one instrument with the affidavit required under 4D(2)(f), or 4D(6); and (iii) in the situation defined in (5)(a)(iv) above, there must be first presented to the court proof that a valid attachment or garnishment has been effected. Upon complying herewith, the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the clerk of court.

(d) Number of Publications. Service of the summons by publication may be made by publishing the same three times, once each week for three successive weeks, in a newspaper published in the county in which the action is pending, if a newspaper is published in such county, and if no newspaper is published in such county then in a newspaper published in an adjoining county and having a general circulation therein.

(e) Mailing Summons and Complaint. A copy of the summons for publication and complaint, at any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, shall be deposited in some post office in this state, postage prepaid, and directed to the defendant at his place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation, and personal service cannot with due diligence be effected

within Montana on any of the persons designated in D(2)(e) above, then service may be completed on said corporation by service upon the secretary of state in the manner, and following the procedure outlined in D(2)(f) above.

(f) Time When First Publication or Service Outside State Must Be Made. The first publication of summons, or personal service of the summons and complaint upon the defendant out of the state, must be made within 60 days after the filing of the affidavit for publication. If not so made, the action shall be deemed dismissed as to any party intended to be served by such publication.

(g) When Service by Publication or Outside State Complete. Service by publication is complete on the date of the last publication of the summons, or in case of personal service of the summons and complaint upon the defendant out of the state, on the date of such service.

(h) Additional Information to Be Published. In addition to the form of summons prescribed above in "C. Process, (2) Summons —Form," the published summons shall state in general terms the nature of the action, and in all cases where publication of summons is made in an action in which the title to, or any interest in or lien upon real property is involved, or affected, or brought into question, the publication shall also contain a description of the real property involved, affected or brought into question thereby, and a statement of the object of the action.

(6) (a) Service on Secretary of State. Whenever service is to be made upon certain corporations as provided hereinabove in D(2)(f) and D(5)(e), the requirements of said D(2)(f) must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed, or is deemed by law to have been appointed, as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party, or his attorney, shall make an affidavit stating the facts showing that the secretary of state is such agent, and stating the residence and last known post-office address of the person to be served, and shall file such affidavit with the clerk of court in which such claim for relief is pending, accompanied by sufficient copies of the affidavit, summons and complaint for service upon the secretary of state, and there has also been deposited with the clerk of the court in which such claim for relief is pending the sum of five dollars to be paid to the secretary of state as a fee for each of said defendants for whom the secretary of state is to receive such service; then the clerk shall forward the original summons, one copy of the summons and one copy of the affidavit for the files of the secretary of state, and one copy of the summons attached to copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee, to the office of the secretary of state.

Such service on the secretary of state shall be sufficient personal service upon the person to be served, provided that notice of such

service and a copy of the summons and complaint are forthwith sent by registered or certified mail by the secretary of state or his deputy to the party to be served at his last known address, marked "Deliver to Addressee Only" and "Return Receipt Requested," and provided further that such return receipt shall be received by the secretary of state purporting to have been signed by said addressee, or the secretary of state shall be advised by the postal authority that delivery of said registered or certified mail was refused by said addressee, except in those cases where compliance is excused under the provisions of D(2)(f) above. The date upon which the secretary of state receives said return receipt, or receives advice by the postal authority that delivery of said registered or certified mail was refused by the addressee, shall be deemed the date of service.

As an alternative to sending the summons and complaint by registered or certified mail, as herein provided, the secretary of state, or his deputy, may cause copy of the summons and complaint to be served by any qualified law enforcement officer, in accord with the procedure set out in D(1), (2) or (3) of this rule.

The secretary of state, or his deputy, shall make an original and two copies of an affidavit reciting: (1) the fact of service upon him by the clerk of court, including the day, and hour of such service; (2) the fact of his mailing a copy of the summons and complaint and notice to the defendant, including the day and hour thereof, except in those cases where he is relieved from doing so under the provisions of D(2)(f) in which cases his affidavit shall so recite; and (3) the fact of his receipt of a return from the postal department including the date, and hour thereof, and attaching to his affidavit a copy of such return. The secretary of state, or his deputy, shall then transmit the original summons, and his original affidavit along with copy of his notice to the defendant where such notice was required, to the clerk of court in which the claim for relief is pending, and it shall be filed in the claim for relief by said clerk of court; and the secretary of state shall also transmit to the attorney for the plaintiff copy of the affidavit of the secretary of state along with copy of the notice to the defendant where such notice was required. The secretary of state shall keep on file in his office a copy of the summons, a copy of the affidavit served on him by the clerk of court, and a copy of the affidavit executed and issued by the secretary of state.

(b) [Continuance to Allow Defense.] In any of the cases provided for in Rule 4D(2)(f) above, or provided for hereinabove in 4D(6)(a), the court in which the claim for relief is pending may order such continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it deems just, the court may allow any process or proof of service thereof to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(8) Proof of Service. Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(a) If served by the sheriff or other officer, his certificate thereof;

(b) If by any other person, his affidavit thereof;

(c) In case of publication an affidavit of the publisher and an affidavit of the deposit of a copy of the summons and complaint in the post office as required by law, if the same shall have been deposited; or

(d) The written admission of the defendant showing the date and place of service.

The certificate or affidavit of service mentioned in this subdivision must state the time, date, place, and manner of service.

(9) Contents of Affidavit of Service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff or person designated by law, the affidavit of service when made, shall state that the person so serving is of legal age, and the date and place of making the service. It also shall state that the person making such service knew the person served to be the person named in the papers served and the person intended to be served.

(10) Procedure Where Only Part of Defendants Are Served. If the summons is served on one or more, but not all, of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served, and may at any time thereafter have a summons against the defendant not served with the first process to cause him to appear in said court to show cause why he should not be made a party to such judgment. Upon such defendant being duly served with such process, the court shall hear and determine the matter in the same manner as if such defendant had been originally brought into court, and such defendant shall also be allowed the benefit of any payment or satisfaction which may have been made on the judgment before recovered.

History: En. Sec. 4, Ch. 13, L. 1961; amd. Sec. 1, Ch. 189, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1965 amendment rewrote paragraphs (e) and (f) of subdivision (2), for previous text of which see parent volume; substituted "if the defendant is a domestic or foreign corporation, that none of the persons designated in D(2)(e) above can" for "that the defendant, if a domestic or foreign corporation, has no agent for the service of process, nor managing nor business agent, cashier, secretary, or other officer who can" in clause (ii) of paragraph (5)(c); inserted "and if desired, it may be combined in one instrument with the affidavit required under 4 D(2)(f), or 4 D(6)" at the end of clause (ii) of paragraph (5)(c); substituted the second sentence of paragraph (5)(e) for two sentences applying only to foreign corporations, for text of which see parent volume; substituted "any party intended to be served by such publication" for "any person not served within said 60-day period" at the end of paragraph (5)(f); completely rewrote subdivision (6), for previous text of which see parent volume; inserted "by" in clause (8)(b); and made minor style changes in paragraphs (3), (4), and (5)(a)(iv).

The amendment of September 7, 1965, in subdivision (2), deleted "or attorney" in clause (i) of paragraph (e) and, in paragraph (f), substituted "court of this state" for "court in this state" in the first clause of the first sentence, substituted "subject to the jurisdiction * * * Rule 4B

above" for "actually doing business within Montana or was actually doing business in Montana at the time the claim for relief arose," in the second clause of the first sentence, and substituted "persons" for "person" in the fourth sentence.

The amendment of November 28, 1966 added paragraph (i) of subdivision (2); in the second sentence of subdivision (3), deleted "of summons" after "Where service," deleted "made after the filing of the required complaint and required affidavit for publication" after "out of the state," inserted the reference to 4(5)(c), and made other changes in phraseology; and, in clause (8)(d), substituted "date" for "time."

The amendment of September 29, 1967, in subdivision (4), inserted "with the provisions hereafter prescribed in D(5)(h), and" and "93-6228."

The 1971 amendment inserted in subdivision (2) (e) (ii) the provision for service on the registered agent named in the records of the secretary of state.

Commission Note to 1965 Amendment

Because of criticism from several members of the Bar, as well as the office of the Secretary of State, changes have been made in the provisions of Rule 4. In addition, some housekeeping changes have also been made.

We have inserted at the points where changes or additions have been made the new language italicized [not italicized herein; see Amendment note above].

Several members of the Bar have called the attention of the Rules Committee to the fact that particularly in quiet title actions, where defunct corporations were involved, and where none of the persons could be found with due diligence upon whom service could be completed that would be binding on the defunct corporation, that effective service could not be obtained by reason of the requirement of a return of a registered receipt showing delivery of the summons and complaint to the defunct corporation. We have now corrected that defect. In doing so, we have also brought within the framework of Rule 4 the provisions of R. C. M. 1947, Sections 93-3008, 93-3011, and 93-3012, which will be superseded. In addition, as long as we are changing Rule 4, we have now specified and delineated the same persons to be served whether or not the defendants are domestic or foreign corporations, or domestic or foreign partnerships or other unincorporated associations. It will be recalled that when Rule 4 was first promulgated, and in an effort not to bring about any changes in our prior practice, the old, separate, segregated statutes pertaining to domestic and foreign corporations were segregated in Rule 4. There is no reason, however, why the same persons should not be delineated for both domestic and foreign corporations, and we have now done so in this new writing of Rule 4.

In lieu of the requirement of a return receipt signed on behalf of the corporations, which in many instances cannot be accomplished, as pointed out in the criticism from the Bar, we have now added a requirement for publication of summons against such corporation where none of the persons can be found with due diligence upon whom personal service can be completed. (See the new D(2)(f). In so providing, however, we have now spelled out that the same procedure for publications shall be followed for serving corporations personally in in personam actions, as we have provided for serving such corporations by publication in in rem actions (see D(5)(e)).

Accordingly, we have made an effort to combine and streamline service on corporations by designating the same individual persons who can be served, whether the corporations are domestic or foreign, and providing the same procedure of publication where such persons cannot be found with due diligence, whether or not the defendants are domestic and foreign, and we have eliminated the necessity of the return of a signed registry receipt objected to so heavily by the Bar.

A second important change in the rule is specific authorization for an attorney for the plaintiff to incorporate within the framework of one single affidavit all the material necessary for serving defunct corporations personally, for serving by way of publication, and for serving the secretary of state.

Changes have also been made in those portions of the rule providing for service on the secretary of state. We have eliminated the necessity of the intermediate step of having summons and complaint go through the hands of the sheriff in Lewis and Clark County; we have cut down on the papers that must be kept on file by the secretary of state, particularly eliminating the necessity of his keeping a copy of the complaint; and we have provided a requirement that the secretary of state shall now serve upon the attorney for the plaintiff the factual information showing what was done by the secretary of state in effecting service, and the date when it was accomplished.

There are other minor housekeeping changes in the rule, and wherever there is any change, omission, alteration, or new language, reference to it is contained at the points where such is accomplished.

Commission Note to September 7, 1965 Amendment

The amendments to Rule 4D(2) as to (e) is to remove an "attorney" because of doubt as to who would be such within the meaning of the Rule. As to (f) to avoid possible conflict of the provisions of this subdivision and those of 4B.

The other amendments [Rules 50(b), 52(b), 59(e) and 60(c)] will expedite the hearing and determination of the motions involved, and provide a time after submission within which the motions are deemed denied if the court fails to decide them.

Advisory Committee's Note to November 28, 1966 Amendment

Rule 4D(2)(i): The purpose of the amendment is to remove doubts as to the manner of suing an estate and a trust, resultant from the inclusion of "an estate" and "a trust" in the definition of a person in 4A.

Rule 4D(3): To make it clear that the personal service outside this state dispenses with the necessity for following the procedure for service by publication prescribed by 4D(5). The provision for service of "a summons and complaint" permits personal service of either the original summons or the summons for publication, together with the complaint. As provided in 4D(5)(g), in case of personal service outside of this state service is complete on the date of such service.

Rule 4D(8)(d): To make it clear that it is the date and not the hour of day which should be shown in the admission of service. The time requirement in certificates or affidavits of personal service is considered desirable and no change in the last paragraph of 4D(8) is recommended.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.
See Committee's Note to 42C(2).

Retroactive Application

Rule 4B(1), applied to act of alleged malpractice occurring in Montana prior to the effective date of this rule (Rule 86(a)) and doctor who had not resided in Montana since effective date of rule could properly be served with process in California under this rule. State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 111.

DECISIONS UNDER FORMER LAW

Paragraph (2)

The doctrine of ostensible agency under section 2-205 has no application in determining whether service of process has been legally made on a "managing or general agent" within the meaning of this rule. Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

Paragraph (5)

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Paragraph (8)

Appearance and waiver executed by a foreign corporation, not qualified to do business in Montana, acknowledging receipt of amended complaint filed by plaintiff sufficiently complied with former section 93-3018. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P 2d 252, 255.

Rule 5. Service and filing of pleadings and other papers.

(a) SERVICE—WHEN REQUIRED. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

History: En. Sec. 5, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted "Except as otherwise provided in these rules" at the beginning of the first

sentence; deleted "affected thereby, but" at the end of the first sentence, making the remainder of the original sentence into the second sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 5(a), as amended 1963.

Explanation of change: The words "affected thereby" stricken out by the amendment, introduced a problem of interpretation. The amendment eliminates this difficulty and promotes full exchange of information among the parties by requiring service of papers on all the parties to the action, except as otherwise provided in the rules.

Rule 6. Time.

(a) COMPUTATION.

Statute of Limitations

Complaint filed three years and one day after act in suit governed by three-year statute of limitations was timely where last day of three-year period was Sunday. Grey v. Silver Bow County, 149 M 213, 425 P 2d 819.

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d), (e) and (f), and 60(b), except to the extent and under the conditions stated in them.

History: En. Sec. 6, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 inserted the reference to Rule 50(f).

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Reference to "59(f)" is added to conform with amendments to Rule 59.

III. PLEADINGS AND MOTIONS

Rule 8. General rules of pleading.
12. Defenses and objections—When and how presented—By pleading or motion —Motion for judgment on pleadings.
13. Counterclaim and cross-claim.
15. Amended and supplemental pleadings.

Rule 7. Pleadings allowed—Form of motions.

(a) PLEADINGS.

Reply

A plaintiff is not required to reply to an answer where not specifically ordered to do so by the court, nor is it mandatory to reply to an affirmative defense of a release, since under Rule 8(d), where no responsive pleading is required, the averment is deemed denied. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

References

Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

(c) DEMURRERS, PLEAS, ETC., ABOLISHED.

References

Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 8. General rules of pleading.

(a) CLAIMS FOR RELIEF.

Failure to Plead Claim

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, no deficiency judgment could be rendered and the pleadings could not be amended to conform even though evidence had been received which might have supported such a judgment. Gallatin Trust & Savings Bank v. Darrah, 152 M 256, 448 P 2d 734.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note may properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Statute of Limitations

Although the statute of limitations need not be negated in the complaint, the court should consider whether a motion to amend a complaint relates back to the original complaint and so avoids the bar of the statute of limitations. Prentice Lumber Co. v. Hukill, — M —, 504 P 2d 277.

References

Hidden Hollow Ranch v. Collins, 146 M 321, 406 P 2d 365; Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 93.

(b) DEFENSES—FORM OF DENIALS. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "or" for "of" after "only a part" in the fourth sentence.

(c) AFFIRMATIVE DEFENSES. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

History: En. Sec. 8, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment substituted "affirmatively" for "affirmative" after "shall set forth" in the first sentence.

Insurance Policy Exclusions

Insurer need not affirmatively plead exceptions and exclusions from coverage contained in policy where entire policy and insurer's denial of coverage were incorporated in insured's pleadings. Home Ins. Co. v. Pinski Bros., Inc., 156 M 246, 479 P 2d 274.

Laches

Defendant who failed to plead laches as an affirmative defense in his answer waived such defense and could not raise the issue in a post-trial motion to dismiss. Hansen v. Kiernan, — M —, 499 P 2d 787.

Partial Payment

Partial payment by special deposit was an affirmative defense which debtor had burden of proving in suit on note; that burden of proof required that it be shown that payment was made on the particular obligation in controversy. Baker Nat. Bank v. Lestar, 153 M 45, 453 P 2d 774.

Res Judicata

Where supreme court affirmed dismissal of complaint by trial court on ground that complaint was unverified as required by section 93-3702 and on additional ground that complaint failed to state a claim upon which relief could be granted and a week later plaintiff filed a second verified amended complaint which eliminated confusion, the issue of res judicata was not so clear that the supreme court on the second appeal could say that the trial court could have found the defense of res judicata available without an answer under Rule 8(c) or responsive pleading to present the record of the former judgment plus a statement to show why it should be treated as res judicata. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 748.

Unavoidable Accident

Unavoidable accident is not among defenses that must be pleaded affirmatively and is covered under general denial of negligence. Graham v. Rolandson, 150 M 270, 435 P 2d 263.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

(d) EFFECT OF FAILURE TO DENY.

Answer

No further proof of heirship was required and summary judgment was proper where portion of paragraph in complaint alleging heirship was admitted in answer. Sikora v. Sikora, — M —, 499 P 2d 808.

Reply

The stipulation in this rule that averments in answer to which no responsive pleading is required are denied, read in conjunction with Rule 7(a), does not compel the plaintiff to reply to an answer averring the affirmative defense of a release. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

(e) PLEADING TO BE CONCISE AND DIRECT—CONSISTENCY.

Form of Pleading

No particular form of pleading is necessary to seek partition of property in a divorce proceeding, and where plaintiff prayed that the court settle and adjust the property rights of the parties, including partition or sale of the property if necessary, and both sides briefed and argued the issue, there was sufficient notice to defendant and partition was proper. Hodgson v. Hodgson, 156 M 469, 482 P 2d 140.

Rule 9. Pleading special matters.

(b) FRAUD, MISTAKE, CONDITION OF THE MIND.

References

Brooks v. Brooks Pontiac, Inc., 143 M 256, 389 P 2d 185.

(c) CONDITIONS PRECEDENT.

General Denial

In action by materialman against general contractor for material supplied subcontractor, contractor could not make affirmative defense that statutory notice was not given under materialmen's statute after materialman alleged that he had complied with all conditions precedent to bringing suit and contractor entered general denial; general denial of allegation

that all conditions precedent were performed did not put matter in issue and would be treated as admission that they were performed. Treasure State Industries, Inc. v. Leigland, 151 M 288, 443 P 2d 22.

References

Interstate Mfg. Co. v. Interstate Products Co., 146 M 449, 408 P 2d 478.

Rule 11. Signing of pleadings.

Lack of Verification

Where a complaint was prepared to conform to this rule but lacked verification, and defendant waited until after he received an adverse judgment to raise the issue in a motion to dismiss on appeal, such motion failed as his proper remedy would have been a motion to strike under Rule 12. Adams v. Davis, 142 M 587, 386 P 2d 574.

Rule 12. Defenses and objections—When and how presented—By pleading or motion—Motion for judgment on pleadings.

(a) WHEN PRESENTED.

Pleading after Denial of Motion

Defendants had twenty days from day on which motion to dismiss complaint was denied in which to serve and file responsive pleading. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

DECISIONS UNDER FORMER LAW

Default Taken Prematurely

Husband who went to Canada and was personally served there in divorce action had forty days in which to answer under the combined time allotted in former Rules 4(D)(5)(g) and 12(a), M. R. Civ. P., and default taken before that time was voidable. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Jurisdiction

Jurisdiction of the court attaches at the time of personal service of the complaint and summons, so that a prematurely entered default judgment is voidable and not void. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(i) The cases in which place of trial may be changed are specified in section 93-2906, R. C. M. 1947.

(ii) If the county designated in the complaint is not the proper county for trial of the action, the defendant must at the time of his first appearance request by motion that the trial be had in the proper county. Every defense in law or fact, to a claim for relief in any pleading which defendant desires to present by way of motion as hereinabove provided must be joined with, or inserted in, the motion requesting a change in the place of trial. If the court in which the action is commenced grants the request for change of venue, that court shall not consider nor pass upon other defenses in law, or fact, presented by the motion, but such shall be considered and decided by the court sitting in the proper county after the transfer has been completed. No request for change of venue is waived by being joined in a motion with other defenses or objections in law or fact.

(iii) Any request for change in place of trial for grounds 2 and 3 of section 93-2906, R. C. M. 1947, must be presented by motion within 20 days after the answer to the complaint, or to the cross-claim where a cross-claim is filed, or the reply to any answer, in those cases in which a reply is authorized, has been filed; except that whenever at some time more than twenty days after the last pleading has been filed an event occurs which thereafter affords good cause to believe that an impartial trial cannot be had under ground 2 of said section 93-2906, and competent proof is submitted to the court that such cause of impartiality did not exist within the twenty-day period after the last pleading was filed, then the court may entertain a motion to change the place of trial under ground 2 of section 93-2906 within twenty days after that later event occurs.

(iv) With respect to ground 4 of section 93-2906, R. C. M. 1947, the party who disqualifies a district judge, and who desires a change of venue, must include such request in a motion filed along with the affidavit of disqualification. If the party who does not disqualify the district judge desires a change of venue, he shall make such request by motion within 5 days after being served with a copy of the affidavit of disqualification. Unless the parties have agreed in writing upon another district judge, or upon a member of the bar as judge pro tempore, the disqualified district judge must either call in another district judge within fifteen days after filing of the affidavit of disqualification, or ten days after filing of the motion for change of venue, or, if no other judge is called in, grant the motion for change of venue. If any other qualified district judge shall be called in, as herein provided, and shall, within thirty days after the motion for change of venue has been filed, appear and assume jurisdiction of the cause and of all matters and proceedings therein, no change of the place of trial shall be made. If the other qualified district judge called in, as herein provided, fails to appear and assume jurisdiction within thirty days after the motion for change of venue has been filed, then the disqualified judge must immediately grant the motion and order a change in the place of trial to some other county.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The 1965 amendment renumbered some of the numbered clauses in the first sentence and added subdivisions (i) to (iv). See Commission Note below.

The amendment of September 29, 1967, in the introductory paragraph, substituted "a party under Rule 19" for "an indispensable party" in item (7); and, in the fourth sentence, substituted "the" for "that" before "claim for relief."

Commission Note to 1965 Amendment

The numbering of the defenses which may be made by motion is changed to conform to that of the Federal Rule, which results in there being no "(3)" because "improper venue" as a ground for motion to dismiss was deleted in 1963. Subdivisions (i), (ii), (iii), and (iv) are added to clarify and detail the time and manner for motions for change of place of trial in the cases specified in Section 93-2906, R. C. M. 1947.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(b), as amended 1966.

Explanation of change: The terminology is changed to accord with the amendment of Rule 19. The numbering of listed defenses of the Montana Rule is retained: "(3) improper venue" is omitted; and the provisions of subdivisions (i), (ii), (iii) and (iv), dealing with motions for change of place of trial, remain unchanged.

Failure to State a Claim

Where contract for sale of real property contained statements that time was of the essence and that payments could be made on or before January 15 of each year, action for breach of contract by vendor against vendee for making accelerated payments was improperly dismissed for failure to state a claim, since the words of the contract were ambiguous and it did not appear as a certainty that plaintiff was entitled to no relief. Kielmann v. Morgan, 156 M 230, 478 P 2d 275.

Involuntary Dismissal

Rule 41(b), providing for involuntary dismissal which operates as an adjudication upon the merits, has no application to a motion to dismiss for failure to state a claim under this rule. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 750.

Motion to Dismiss

A motion to dismiss under this rule is equivalent to a demurrer under former procedure. Payne v. Mountain States Telephone and Telegraph Co., 142 M 406, 385 P 2d 100; Holtz v. Babcock, 143 M 341, 389 P 2d 869, 390 P 2d 801; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

While a motion to dismiss for failure to state a claim on which relief can be granted is the same as a demurrer under former Montana procedure and therefore admits to all facts well pleaded, it does not admit to controversial conclusions of law or to the accuracy of alleged construction of written instruments set forth in the pleading. Holtz v. Babcock, 143 M 341, 389 P 2d 869, 390 P 2d 801.

An order sustaining a motion to dismiss is not appealable. Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

A motion to dismiss was proper under this rule where return was made more than three years after commencement of action in violation of Rule 41(e), and lack of jurisdiction did not have to be pleaded as an affirmative defense. Whitcraft v. Semenza, 145 M 94, 399 P 2d 757.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under this rule, the judgment was not res judicata as to a second amended complaint under the provisions of Rule 56(c) treating motion as a summary judgment where matters outside the pleadings were presented to and not excluded by the court. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749.

(c) MOTION FOR JUDGMENT ON THE PLEADINGS.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(d) PRELIMINARY HEARINGS. The defenses specifically enumerated (1) [to] (7) in subdivision (b) of this rule whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until trial.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The compiler inserted the bracketed "to" near the beginning of this subdivision.

Amendments

The amendment of September 29, 1967 substituted "(7)" for "(6)" and deleted "the" before "trial" at the end of the section.

Advisory Committee's Note to September 29, 1967 Amendment

Explanation of change: "(7)" has been substituted for "(6)" to correct misnumbering and conform to the defenses enumerated in subdivision (b) [Rule 12(b)].

(g) CONSOLIDATION OF DEFENSES IN MOTION. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence, substituted "any" for "the" before "other motions"; in the second sentence, substituted "but omits therefrom any defense or objection" for "and does not include therein all defenses and objections" and "on the defense or objection" for "on any of the defenses or objections"; inserted "a motion" after "except"; and substituted "subdivision (h)(2) * * * there stated" for "subdivision (h) of this rule."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: Where a dilatory defense is omitted from a preanswer motion, under the language of these subdivisions [Rule 12(g) and 12(h)] the cases are divided on the question of whether the defense can be included in the answer although it is not permitted in another motion. This amendment prevents the inclusion of such omitted defenses in the answer as well as in another preanswer motion. This change follows the provisions of the federal amendment, except that "improper venue" is not included in the enumeration in (h)(1)(A), because the times for making motions for a change of venue are specified in subdivisions (b)(ii), (iii) and (iv) of the Montana Rule [12(b)].

The substance of subdivision (g) has not been changed.

(h) WAIVER OR PRESERVATION OF CERTAIN DEFENSES. (1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

History: En. Sec. 12, Ch. 13, L. 1961; amd. Sec. 1, Ch. 89, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule, dividing it into three subdivisions. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 12(g) and (h), as amended 1966.

Explanation of change: See Advisory Committee's Note under Rule 12(g).

Lack of Jurisdiction

Defendant who did not plead lack of jurisdiction over the person in his initial response to complaint was precluded from making subsequent motion on the omitted defense under subsection (g) and he thereby waived the defense under provisions of this subsection. Prentice Lumber Co. v. Spahn, 156 M 68, 474 P 2d 141.

Rule 13. Counterclaim and cross-claim.

(g) CROSS-CLAIM AGAINST COPARTY.

Failure to File

Employer's insurer who paid judgment entered against employer and employee in automobile accident case did not lose its right of indemnity against employee by employer's failure to file cross-claim in accident action. St. Paul Fire & Marine Ins. Co. v. Thompson, 152 M 396, 451 P 2d 98.

DECISIONS UNDER FORMER LAW

Parties to Cross-claim

District court did not have jurisdiction and power to adjudicate mechanics' liens of cross-complainants, materialmen, where they failed to serve the principal contractor with process. Greene Plumbing & Heating Co. v. Morris, 144 M 234, 395 P 2d 252, 256.

(h) JOINDER OF ADDITIONAL PARTIES. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

History: En. Sec. 13, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 13(h), as amended 1966.

Explanation of change: The amendment to Rule 13(h) incorporates by direct reference the revised criteria and procedures of Rule 19, as amended. The amendment also expressly refers to Rule 20 thus correcting an existing inadequacy by calling attention to the fact that a party pleading a counterclaim or a cross-claim may join additional persons when the conditions for permissive joinder of parties under Rule 20 are satisfied. Hereafter, for the purpose of determining who must or may be joined as additional parties to a counterclaim or cross-claim, the party pleading the claim is to be regarded as a plaintiff and the additional parties as plaintiffs or defendants as the case may be, and amended Rules 19 and 20 are to be applied in the usual fashion.

Rule 14. Third-party practice.

(a) WHEN DEFENDANT MAY BRING IN THIRD PARTY.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile casualty insurance policy which had allegedly been canceled prior

to the time of the accident involving the automobile of the insured sued for injuries resulting from the accident, since the issues which did not involve federal law, could be solved in the state court wherein third-party complaint under this rule had been filed by the insured against the insurer in which the insured sought to hold the insurer to the terms of the policy, where the state court could dispose of the coverage problems first under M. R. Civ. P., Rule 42(b). Western Casualty & Surety Co. v. Pinson, 255 F Supp 624, 625.

Separate Trial of Third Party Action

Third party claim initiated by hospital, which was being sued by minor patient burned by defective television switch while in hospital, against lessor of television equipment should have been separated from main action between hospital and patient and tried separately. Crosby v. Billings Deaconess Hospital, 149 M 314, 426 P 2d 217.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 15. Amended and supplemental pleadings.

(a) AMENDMENTS.

Discretionary Power of Court

Where it was very clear that the supreme court, upon a former appeal of the same case, was unanimous in its decision to affirm the jury verdict and as to the ineffectiveness of additur order, the fact that the supreme court affirmed the jury verdict and thereby finally determined the amount of the award withdrew any discretion that might have been otherwise possessed by the trial judge to allow amendments to the pleadings. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

Trial court's discretionary power to grant leave to amend pleadings may be limited by a decision of the supreme court upon a former appeal of the same case. State acting by and through State Highway Commission v. Schmidt, 148 M 316, 420 P 2d 153, 155.

A proposed second amended complaint which sought to substitute an indebtedness on account of goods sold and delivered for indebtedness on a default judgment covering substantially the same account because the judgment had been set aside, and which attempted to hold the directors personally liable for the debts of a corporation by reason of their failure to file an annual statement, was properly refused by the trial court where the evidence indicated bad faith in that the vacated default judgment was taken without the knowledge of the president or directors of the corporation and in that the course of dealings with the president of the corporation was withheld from the directors of the subject corporation. Prentice Lumber Co. v. Hukill, — M —, 504 P 2d 277.

Right to Amendment of Course

The motion to dismiss for failure to state a claim is not a responsive pleading within the provisions of this rule that complaint may be amended once as a matter of course before a responsive pleading is served. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 748.

(b) AMENDMENTS TO CONFORM TO THE EVIDENCE.

Notice of Claim

Where plaintiff failed to plead claim for deficiency judgment on balance remaining after sale of repossessed vehicles, the pleadings could not later be amended to conform to evidence that would have supported a deficiency judgment. Gallatin Trust & Savings Bank v. Darrah, 152 M 256, 448 P 2d 734.

(c) RELATION BACK OF AMENDMENTS. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him, the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that,

but for a mistake concerning the identity of the proper party, the action would have been brought against him.

The requirements of clauses (1) and (2) hereof are satisfied with respect to any city, village, town, school district, county, or public agency, board or officer of such public bodies, and with respect to the state or any state board, agency or officer thereof, to be brought into the action as defendant, if process is served as provided by Rule 4D(2)(g) and (h) for service upon such defendant.

History: En. Sec. 15, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence of the first paragraph and added the second paragraph.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 15(c), as amended 1966.

Explanation of change: This amendment is designed to avoid problems which have arisen in instances in which the complaint named the wrong defendant and the statute of limitations expired prior to an amendment correcting the error. Where the newly named defendant received notice of the action and knew or should have known that he was the intended defendant, it seems unjust to prohibit relation back.

The most serious difficulties under the Federal Rules have been in suits against the United States or an agency or officer thereof. The second paragraph of the federal amendment contains specific provisions for such cases and the second paragraph of this amendment adapts the federal provision to suits where the true defendant is the state or a political subdivision thereof.

The change will also further the objective of the provision of Rule 25(d) for automatic substitution of the successor public officer.

Amendment after Running of Limitations

If original complaint is timely filed, amended complaint dealing with same transaction set out in original complaint will relate back to original complaint, even though amended complaint changes legal theory of action, adds claim arising out of same transaction or states facts more specifically, and even though amended complaint is filed after running of statute of limitations. Rozan v. Rosen, 150 M 121, 431 P 2d 870.

(d) SUPPLEMENTAL PLEADINGS.

Notice

Trial court was justified in refusing to grant defendants' motion to amend their answer by adding an affirmative defense of compromise and settlement, even though it was represented that some sort of compromise settlement had been reached after filing of complaint and answer, since defendants had not given plaintiffs notice of this motion as required by this section. Montgomery v. Gehring, 145 M 278, 400 P 2d 403.

Rule 16. Pretrial procedure—Formulating issues.

Discretion of Court

Pretrial procedure is optional, it being left to trial court's discretion whether to utilize procedure and to what extent. Lenz v. Mehrens, 149 M 394, 427 P 2d 297.

Issues on Appeal

Issues of waiver and breach of contract not covered by pretrial order could not be raised on appeal. Davis v. Davis, — M —, 497 P 2d 315.

IV. PARTIES

Rule 17. Parties plaintiff and defendant—Capacity.
18. Joinder of claims and remedies.
19. Joinder of persons needed for just adjudication.
20. Permissive joinder of parties.
23. Class actions.
23.1. Derivative actions by shareholders.
23.2. Actions relating to unincorporated associations.
24. Intervention.

Rule 17. Parties plaintiff and defendant—Capacity.

(a) REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the state of Montana so provides, an action for the use or benefit of another shall be brought in the name of the state of Montana. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

History: En. Sec. 17, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 deleted the conjunction "but" between the present first and second sentences and made them separate sentences; and added the third sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 17(a), as amended 1966.

A bailee is added to the list of real parties in interest; and a minor change is made in the text to make it clear that the specific instances enumerated are not exceptions to, but illustrations of, the rule, and carry no negative implications.

The provision that no action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after the objection has been raised, for ratification, etc., keeps pace with modern decisions which, in the interests of justice, are inclined to be lenient when an honest mistake has been made in choosing the party in whose name the action is filed.

Assignee for Collection

Assignees of claim paid by their liability insurer were real parties in interest and entitled to sue their indemnitor and its insurer in their own names because the assignees had legal title to the claim and this was sufficient to constitute the assignees the real parties in interest. Washington Water Power Co. v. Morgan Electric Co., 152 M 126, 448 P 2d 683.

Oral Gift

Son was not real party in interest in action on stated account, based on oral gift to son, where buyer of goods was never aware that son was owner but dealt entirely through father. Hanlon v. Anderson, — M —, 502 P 2d 51.

References

State ex rel. Farmers Elevator Co. of Reserve v. District Court, 147 M 72, 410 P 2d 160.

Rule 18. Joinder of claims and remedies.

(a) JOINDER OF CLAIMS. A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims either legal or equitable or both as he has against an opposing party or co-party.

History: En. Sec. 18, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 18(a), as amended 1966.

Explanation of change: Under the prior rule some courts have inferred that the standards of Rules 19, 20, and 22 relate to and limit Rule 18(a) in multiple party

cases. Thus, Rule 20(a) resulted in a holding that, unless each claim arose from a single transaction or series of transactions and involved a question common to all defendants, there could be no joinder. Federal Housing Admr. v. Christianson, 26 F Supp 419 (D. Conn. 1939). This amendment is designed to overcome such decisions and to state clearly that a party asserting a claim (original claim, counterclaim, cross-claim, third party claim) may join as many claims as he has against an opposing party regardless of the fact that there are multiple parties. The joinder is subject to the court's power to direct appropriate procedure for trying the claims. See Rules 42(b), 20(b), 21. Joinder of parties is governed by other rules operating independently.

In addition to the changes in the Federal Rules the words "or co-party" are added to the Montana amendment for consistency with the provisions of this amendment for cross-claims and Rule 13(g).

Divorce Proceedings

Where wife brought suit for divorce and husband filed cross complaint for adjudication of his right to property acquired by their joint effort, the general equity powers of the court were properly invoked by joining in a single action the prayer for divorce and adjudication of the dispute between the parties concerning property rights. Tolson v. Tolson, 145 M 87, 399 P 2d 754, explained in 157 M 252, 257, 484 P 2d 748.

In divorce proceedings, jointly held property may be partitioned by the district court, which has the power to settle and to adjust property jointly accumulated, regardless of whether the pleadings contain a specific prayer for partition. Hodgson v. Hodgson, 156 M 469, 482 P 2d 140.

In a divorce action a district court may completely divest the wife of her interest in property, no matter how it is held, and provide for the payment of alimony in lieu thereof; no particular pleading is required to raise question of equitable division of property; any pleading is sufficient which gives notice of pleader's intent to raise the issue; specific relief need not be requested. Libra v. Libra, 157 M 252, 484 P 2d 748, overruling Emery v. Emery, 122 M 201, 200 P 2d 251 and affirming rule of Johnson v. Johnson, 137 M 11, 139 P 2d 310.

DECISIONS UNDER FORMER LAW

Assignor Bringing Action

Assignee of one-half interest of an overriding royalty agreement with plaintiff-assignor and defendant could not be joined as a party plaintiff in a suit to compel defendant to pay the other half interest to plaintiff whether assignor was a trustee for the assignee or they were tenants in common. Lowe & Lynn v. Flank Oil Co., 144 M 499, 398 P 2d 608.

Rule 19. Joinder of persons needed for just adjudication.

(a) PERSONS TO BE JOINED IF FEASIBLE. A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: This is a substitution for existing Rule 19 in its entirety. The changes are intended to make clear

that whenever feasible the persons materially interested in the subject of an action should be joined as parties so that they may be heard and a complete disposition made. When this comprehensive joinder cannot be accomplished the case should be examined pragmatically and a choice made between the alternatives of proceeding with the action in the absence of particular interested persons, and dismissing the action.

Even if the court is mistaken in its decision to proceed in the absence of an interested person, it does not by that token deprive itself of the power to adjudicate as between the parties already before it through proper service of process. But the court can make a legally binding adjudication only between the parties actually joined in the action. It is true that an adjudication between the parties before the court may on occasion adversely affect the absent person as a practical matter, or leave a party exposed to a later inconsistent recovery by the absent person. These are factors which should be considered in deciding whether the action should proceed, or should rather be dismissed; but they do not themselves negate the court's power to adjudicate as between the parties who have been joined.

The change straightens out difficulties in the wording of the old rule. The word "indispensable" is used only in a conclusory sense, that is, a person is "regarded as indispensable" when he cannot be made a party and, upon consideration of the factors mentioned in subdivision (b), it is determined that in his absence it would be preferable to dismiss the action, rather than to retain it. The factors mentioned in subdivision (b) of the rule are not intended to be exclusive and others may be applicable in particular situations. The court is to determine whether in equity and good conscience the action should proceed among the parties already before it, or should be dismissed.

Injured Party in Dispute between Insurers

Party who brought original action for injuries but who was not party to either of policies of insurance involved and was only indirectly interested in outcome of litigation between two insurance companies was improper party in declaratory action to determine which of two insurance companies was liable. National Farmers Union Property & Casualty Co. v. General Guaranty Ins. Co., 150 M 297, 434 P 2d 708.

Joinder of Party to Prior Action

Stipulation of owner of bulldozer to be bound by prior judgment even though not a party to previous action precluded subsequent complaint for damages to bulldozer, and there was no need to join him as a party to the previous action. Morris v. McCarthy, — M —, 497 P 2d 102.

(b) DETERMINATION BY COURT OF WHENEVER JOINDER NOT FEASIBLE. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(c) PLEADING REASONS FOR NONJOINDER. A pleading asserting a claim for relief shall state the names, if known to the pleader,

of any persons as described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

History: En. Sec. 19, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

(d) EXCEPTION OF CLASS ACTIONS. This rule is subject to the provisions of Rule 23.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote Rule 19 in general and added Rule 19(d) as a separate subdivision of the rule.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 19, as amended 1966.

Explanation of change: see Advisory Committee's Note under Rule 19(a).

Rule 20. Permissive joinder of parties.

(a) PERMISSIVE JOINDER. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

History: En. Sec. 20, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "these persons" for "of them" near the end of the first sentence; and "defendants" for "of them" near the end of the second sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 20(a), as amended 1966.

This amendment fits into the amendment to Rule 18, and clarifies the antecedent of the word "them."

Scope

The scope of this rule is procedural in nature and removes obstacles to joinder without affecting the substantive rights of the parties, so that in a suit by real estate agents against buyer and seller, judgment for plaintiff would not, in effect, make the buyer a party to a prior contract between the agents and the seller. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

(b) SEPARATE TRIALS.

Disqualification of Judge

Disqualification of trial judge did not make his previous order denying a severance of action against multiple defendants either res judicata or the law of the case, and successor district judge could order

severance on a new motion. State ex rel. Stenberg v. Nelson, 157 M 310, 486 P 2d 870.

References

Wheat v. Safeway Stores, Inc., 146 M 317, 404 P 2d 317.

Rule 21. Misjoinder and nonjoinder of parties.

References

Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Rule 23. Class actions.

(a) PREREQUISITES TO A CLASS ACTION. One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 revised Rule 23 in general and rewrote Rule 23(a) in particular. For text of former Rule 23(a), see parent volume.

Taxpayers

Affected taxpayers had standing under this rule to ask for declaratory judgment against boards of county commissioners which increased appraisals on ground that state board of equalization used wrong rates in assessing timberlands. State ex rel. Conrad v. Managhan, 157 M 335, 485 P 2d 948.

(b) CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition: (1) the prosecution of separate actions by or against individual members of the class would create a risk of

(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class, or

(B) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or (3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally. For text of former Rule 23(b), "Secondary Action By Shareholders," see parent volume, and see Rule 23.1, "Derivative Actions By Shareholders" in this supplement.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23, as amended 1966.

Explanation of change: The amended rule describes in more practical terms than existed under the old rule the occasions for maintaining class actions; provides that all actions maintained to the end as such will result in judgments including those whom the court finds to be members of the class, whether or not the judgment is favorable to the class; and refers to the measures which can be taken to assure the fair conduct of these actions. It is designed to clear up difficulties in drawing distinctions between joint, common, secondary or several rights, and in defining categories in terms of "true," "hybrid," and "spurious," and to give a better guide to the extent and binding effect of judgments.

(c) DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE MAINTAINED—NOTICE—JUDGMENT—ACTIONS CONDUCTED PARTIALLY AS CLASS ACTIONS.

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that (A) the court will exclude him from the class if he so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally. Former Rule 23(c), "Dismissed On Compromise," was somewhat similar to present Rule 23(e). For text of former rules, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23, as amended 1966.

Explanation of change: In order to avoid the necessity for awaiting final judgment before obtaining review by the supreme court of an order under subdivision (c)(1) refusing to permit a class action to be maintained as such, Rule (1)(b) of the Montana Rules of Appellate Civil Procedure is amended to make such an order appealable. There does not seem to be a corresponding necessity for direct appeal, as distinct from appeal from the final judgment, where the court determines that the action may be maintained as a class action.

Supervisory Writ

Defendants were not entitled to a supervisory writ against trial court's ruling that action could be maintained as a class action; under subdivision (d) trial court could alter or amend its order as the litigation progresses. State ex rel. Anaconda Aluminum Co. v. District Court, 158 M 228, 490 P 2d 351.

(d) ORDER IN CONDUCT OF ACTIONS. In the conduct of actions to which this rule applies, the court may make appropriate orders: (1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument; (2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action; (3) imposing conditions on the representative parties or on intervenors; (4) requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly; (5) dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

History: En. Sec. 23, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally. For text of former Rule 23(d), "Orders To Ensure Adequate Representation," see parent volume.

(e) DISMISSAL OR COMPROMISE. A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally and added Rules 23(e) and 23(f). For text of former Rule 23(c), "Dismissal or Compromise," see parent volume.

(f) SECURITY FOR COSTS. Security for costs and charges, which may be awarded against a representative party, may be required by an opposing party. When required, all proceedings in the action must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, to the effect that they will pay such costs and charges as may be awarded against the representative party by judgment, or in the progress of the action, not exceeding the sum of one thousand

dollars. A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action stayed until such new or additional undertaking is executed and filed.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Compiler's Notes

The order of September 29, 1967 rewrote Rule 23 generally and added Rules 23(e) and 23(f).

Advisory Committee's Note to September 29, 1967 Amendment

Explanation of change: In addition to the changes of the Federal Rule [23], subdivision (f) is added to the Montana Rules in order to afford protection against selection of a representative party who may not be responsible for costs and charges.

Rule 23.1. Derivative actions by shareholders.

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 23.1, as adopted 1966.

Explanation of change: A derivative action by a shareholder of a corporation or by a member of an unincorporated association has distinctive aspects which require the special provisions set forth in the new rule. The next-to-the-last sentence recognizes that the question of adequacy of representation may arise when the plaintiff is one of a group of shareholders or members.

The court has inherent power to provide for the conduct of the proceedings in a derivative action, including the power to determine the course of the proceedings and require that any appropriate notice be given to shareholders or members.

The Montana amendment conforms to the 1966 federal amendment, except that it omits the federal provision that the complaint be verified and allege "(1) that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law, and (2) that the action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have." No reason is apparent for requiring a verified complaint in this type of action and not in others, and the allegations required by the federal amendment and omitted from this proposal appear to be designed to prevent abuse of federal jurisdiction and to be unnecessary in state practice.

Rule 23.2. Actions relating to unincorporated associations.

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears that the representative parties

will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 23.2, as adopted 1966.

Explanation of change: Although an action by or against representatives of the membership of an unincorporated association has often been viewed as a class action, the real or main purpose of this characterization has been to give "entity treatment" to the association when for formal reasons it cannot sue or be sued as a jural person under Rule 17. Rule 23.2 deals separately with these actions, referring where appropriate to Rule 23.

Rule 24. Intervention.

(a) INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote item (2), substituting it for former items (2) and (3), allowing intervention when representation of applicant's interest might be inadequate and he might be bound by judgment and when applicant would be adversely affected by court's disposition of property.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 24(a), as amended 1966.

Explanation of change: Subdivision (2) is changed because a class member who claims that his "representative" does not adequately represent him, and is able to establish that proposition with sufficient probability, should not, as was required under the prior rule, be put to the risk of having a judgment entered in the action which by its terms extends to him, and be obliged to test the validity of the judgment as applied to his interest by a later collateral attack. Rather he should, as general rule, be entitled to intervene in the action.

The amendment provides that an applicant is entitled to intervene in an action when his position is comparable to that of a person under Rule 19(a)(2)(i), as amended, unless his interest is already adequately represented in the action by existing parties. The Rule 19(a)(2)(i) criterion imports practical consideration, and the deletion of the "bound" language similarly frees the rule from undue preoccupation with strict considerations of res judicata.

The representation whose adequacy comes into question under the amended rule is not confined to formal representation like that provided by a trustee for his beneficiary or a representative party in a class action for a member of the class. A party to an action may provide practical representation to the absentee seeking intervention although no formal relationship exists between them, and the adequacy of this practical representation will then have to be weighed.

Subdivision (3) is deleted for if an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene, and his right to do so should not depend on whether there is a fund to be distributed or otherwise disposed of as was required under that subdivision. Intervention of right is here seen to be a kind of counterpart to Rule 19(a)(2)(i) on joinder of persons needed for a just adjudication: where, upon motion of a party in an action, an absentee should be joined so that he may protect

his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion.

(c) PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene. When the constitutionality of an act of the legislative assembly affecting the public interest is drawn in question in any action to which neither the state nor any agency or officer thereof is a party, the court shall notify the attorney general of the state and the attorney general may within 20 days thereafter intervene in the same manner on behalf of the state.

History: En. Sec. 24, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence, substituted "the" for "all" before "parties" and "as provided in Rule 5" for "affected thereby" after "parties."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 24(a), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 5(a). See note to that amendment.

Rule 25. Substitution of parties.

(a) DEATH.

Waiver of Substitution Requirements

Failure of plaintiff to substitute executrix of doctor's estate for doctor, in tort action initiated against doctor before his death was waived where attorneys for doctor were also attorneys for executrix, attorneys and executrix were present at trial of action and attorneys for executrix had filed motion for additional time in which to perfect appeal from judgment against doctor. Nagaard v. Feda, 149 M 190, 425 P 2d 79.

V. DEPOSITIONS AND DISCOVERY

Rule 26. Depositions pending action.
28. Persons before whom depositions may be taken.
30. Depositions upon oral examination.
33. Interrogatories to parties.
35. Physical and mental examination of persons.

Rule 26. Depositions pending action.

(b) SCOPE OF EXAMINATION.

Identity of Witnesses

The identity of a traffic engineer who will testify in a collision case involving a question of concurrent negligence is discoverable under this rule. Smith v. Babcock, 157 M 81, 482 P 2d 1014.

Unreasonable Requests

In action by insured against insurance company seeking damages for breach of contract and punitive damages for violations of the insurance code, trial court abused discretion in ordering answer to interrogatory requesting names and addresses of all persons within the state who had made a claim against the insurance company and whose claims the insurance company had either refused to pay or had not paid in full during the last three years; even if relevant and material to issues pleaded, the interrogatory was unreasonable since the value of the infor-

mation sought did not bear a reasonable relationship to the annoyance and expense involved in answering the interrogatory. State ex rel. Bankers Life & Casualty Co. v. Miller, — M —, 502 P 2d 27.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

(e) OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of Rules 28(b) and 32(c), objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

History: En. Sec. 26, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted reference to Rule 28(b) and "the" after "require the exclusion of."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 26(e), as amended 1963.

Explanation of change: This amendment conforms to the amendment of Rule 28(b).

Rule 28. Persons before whom depositions may be taken.

(b) IN FOREIGN COUNTRIES. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of his commission to administer any necessary oath and take testimony, or (3) pursuant to letter rogatory. A commission or a letter rogatory shall be issued on application and notice, and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in [here name the country]." Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these Rules.

History: En. Sec. 28, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 deleted "state or" after "In a foreign"; substituted "may" for "shall" after "depositories"; and rewrote the remainder of the Rule. For text of former Rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 28(b), as amended 1963.

Explanation of change: The amendment of clause (1) is designed to facilitate depositions in foreign countries by enlarging the class of persons before whom the depositions may be taken on notice.

It makes clear that the appointment of a person by commission in itself confers power upon him to administer any necessary oath.

It negates the judicial requirement sometimes stated that letters rogatory will not issue unless the use of a notice or commission is shown to be impossible or impractical. It permits a sound choice between depositions under a leter rogatory and on notice or by commission in the light of all the circumstances.

In executing a letter rogatory the courts of other countries may be expected to follow their customary procedure for taking testimony. The last sentence of the amended subdivision provides, contrary to the implications of some authority, that evidence recorded in such a fashion need not be excluded on that account. Whether or to what degree the value or weight of the evidence may be affected by the method of taking or recording the testimony is left for determination according to the circumstances of the particular case.

(e) DEPOSITION TO BE TAKEN IN SISTER STATES AND FOREIGN COUNTRIES FOR USE IN THIS STATE. Whenever the deposition of any person is to be taken in a sister state or a foreign country, or any other jurisdiction, foreign or domestic, for use in this state, pursuant either to notice or stipulation, the Clerk or equivalent officer of any Court having jurisdiction at the place where the witness is to be served or the deposition taken, upon proof that notice has been duly served for taking of the deposition or that the parties have stipulated to such taking, may issue the necessary subpoenas or equivalent court instruments to require such witness to attend for the taking of the deposition at the time and place in the sister state or foreign country, or any other jurisdiction, foreign or domestic, designated in the notice or stipulation.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Advisory Committee's Note

Officials in some sister states have insisted upon some specific authorization for the issuance of subpoenas by them for use in Montana litigation. The amendment provides that authority.

Rule 30. Depositions upon oral examination.

(b) ORDERS FOR THE PROTECTION OF PARTIES AND DEPONENTS.

Attorney and Client

Protective relief was granted to strike from an amended complaint quotations and purported quotations from legal opinions prepared by defendant's attorneys for defendant and turned over to plaintiff's attorney in accordance with in camera inspection ordered by the district court, which provided that the opinions were to be treated as confidential material and were not to be made a part of the court record or otherwise disclosed to other persons. State ex rel. Union Oil Co. of California v. District Court, — M —, 503 P 2d 1008.

Limitation of Examination

In a libel action it was not error for the trial judge to issue a minute entry order refusing to require the defendant to answer questions submitted by the plaintiff as the court has the power to limit the examination and protect him from annoyance, embarrassment or oppression. Steffes v. Crawford, 143 M 43, 386 P 2d 842.

References

State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

(f) CERTIFICATION AND FILING BY OFFICER—COPIES—NOTICE OF FILING. (1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file

it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing.

(2) and (3). * * * [Same as parent volume.]

History: En. Sec. 30, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in clause (1), inserted "as certified" before "mail to the clerk" in the last sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 30(f), as amended 1963.

This proposal is patterned after the 1963 federal amendment, and conforms to provisions of Rule 4 which permit the use of certified mail as an alternative to the use of registered mail.

Rule 33. Interrogatories to parties.

Any party may serve upon any adverse party, who has been served with process or who has appeared, written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent, who shall furnish such information as is available to the party. A party serving interrogatories upon an adverse party shall file the same in the court in which the action is pending. The interrogatories shall be answered separately and fully in writing under oath. The party answering the interrogatories shall set forth a verbatim re-copy of each of the interrogatories, followed by the answer thereto, and shall file the answers in the court in which the action is pending. The answers shall be signed by the person making them; and the party upon whom the interrogatories have been served for answer shall serve a copy of the answers upon every party who has made written appearance within 20 days after the service of interrogatories upon him, unless the court, on motion and notice and for good cause shown, enlarges or shortens the time. Within 20 days after service of interrogatories a party may serve written objections thereto together with a notice of hearing the objections at the earliest practicable time. Answers to interrogatories to which objection is made shall be deferred until the objections are determined.

Interrogatories may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the same extent as provided in Rule 26(d) for the use of the deposition of a party. Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the court, on motion of the deponent or the party interrogated, may make such protective order as justice may require. The number of interrogatories or of sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment, or oppression. The provisions of Rule 30(b) are applicable for the protection of the party from whom answers to interrogatories are sought under this rule.

History: En. Sec. 33, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750, Nov. 28, 1966, eff. Jan. 1, 1967.

Amendments

The amendment of April 1, 1965 added a third paragraph which read: "A party desiring to serve interrogatories upon an adverse party shall file and serve a copy thereof upon every other party. The party answering the interrogatories shall file the answers in the court in which the action is pending and serve a copy thereof upon every other party."

The amendment of November 28, 1966, in the first paragraph, inserted the second and fourth sentences and substituted "for answer shall serve a copy of the answers upon every party who has made a written appearance" for "shall serve a copy of the answers on the party submitting the interrogatories" in the fifth sentence; and deleted the paragraph added in 1965.

Commission Note to 1965 Amendment

This amendment is consistent with Rule 5. The requirement of service of interrogatories and answers upon all other parties to the litigation may save other parties additional time and effort in duplication of interrogatories resultant from lack of knowledge of what other parties have done. The requirement of filing of answers makes them available to judges who may want to see them.

Commission Note to 1966 Amendment

To put the interrogatories and answers into one document for convenience of use, and to remove any obstacle to the service of interrogatories which may result from the requirement of service upon "every other party."

Identity of Witnesses

Failure to identify witnesses in response to specific interrogatories substantially affected rights of party, entitling him to a new trial. Sanders v. Mount Haggin Livestock Co., — M —, 500 P 2d 397.

Scope

Although this section should be liberally construed to make all relevant facts available to parties in advance of trial and to reduce the possibilities of surprise and unfair advantage, it cannot become a weapon for punishment or forfeiture, or an instrument for the avoidance of a trial on the merits. Wolfe v. Northern Pacific Ry. Co., 147 M 29, 409 P 2d 528.

Unreasonable Requests

In action by insured against insurance company seeking damages for breach of contract and punitive damages for alleged violations of the insurance code, trial court abused its discretion by ordering answer to interrogatory requesting names and addresses of all persons within the state of Montana who had made a claim against the insurance company and whose claims the insurance company had either refused to pay or had not paid in full during the last three years; even if relevant material to issues pleaded, the interrogatory was unreasonable since the value of the information sought did not bear a reasonable relationship to the annoyance and expense involved in answering the interrogatory. State ex rel. Bankers Life & Casualty Co. v. Miller, — M —, 502 P 2d 27.

Rule 34. Discovery and production of documents and things, etc.

Inspection of Land

State's motion for inspection to drill wells on condemnee's property should have been allowed. State ex rel. State Highway Commission v. District Court, 147 M 348, 412 P 2d 832.

Real Estate Appraisals

In proceeding to condemn strip of land in front of leased building, highway commission could not be compelled by lessee to produce appraisals containing no opinion as to damages to, or value of, leasehold. State Highway Commission v. District Court, 149 M 384, 427 P 2d 49.

Rule 35. Physical and mental examination of persons.

(b) REPORT OF FINDINGS. (1). * * * [Same as parent volume.]

(2) Waiver of Privilege. Either by (1) requesting and obtaining a report of the examination ordered as provided herein, or by taking the deposition of the examiner, or by (2) commencing an action or asserting a defense which places in issue the mental or physical condition of a party to the action, the party examined or a party to the action waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every person who has treated, prescribed, consulted, or examined or may thereafter treat, consult, prescribe or examine, such party in respect to the same mental or physical condition; but such waiver shall not apply to any treatment, consultation, prescription or examination for any mental or physical condition not re-

lated to the pending action. Upon motion seasonably made, and upon notice and for good cause shown, the court in which the action is pending, may make an order prohibiting the introduction in evidence of any such portion of the medical record of any person as may not be relevant to the issues in the pending action.

History: En. Sec. 35, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-6, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The amendment of September 29, 1967 rewrote clause (2). For text of former rule, see parent volume.

The 1971 amendment inserted "or asserting a defense" near the beginning of clause (2) of the first sentence of subdivision (b) (2); and substituted "a party to the action" for "the party bringing the action" in two places in the same clause.

Advisory Committee's Note to September 29, 1967 Amendment

This amendment extends the existing modification by Rule 35 of subparagraph 4 of R. C. M. 1947, sec. 93-701-4. The purpose is to facilitate the obtaining of competent medical testimony and the use of testimony of the original attending physician, especially in personal injury cases. The proposal coincides with the view recommended in Wigmore on Evidence (McNaughton rev. 1961), Vol. VIII, secs. 2380 and 2380a.

Physician-Patient Privilege

By filing medical malpractice suit and submitting attending physicians for deposition purposes, patient permanently waived any privilege concerning her eye which was subject matter of suit; order that defense counsel be allowed private conference with physicians was proper. Callahan v. Burton, 157 M 513, 487 P 2d 515.

Rule 36. Admission of facts and of genuineness of documents.

(a) REQUEST FOR ADMISSION.

Construction

The intent of this rule is that the party served shall make a sworn statement of the truth of any relevant matters of fact set forth in the request for admissions. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Discretion of Trial Court

Where defendant failed to file admissions on plaintiff's request and was not permitted to file them later or to reopen hearing on summary judgment, whether defendant's admissions, which were signed and verified by defendant's counsel as being made from a letter received from the defendant, met the intent of this rule was a matter within the discretion of the trial court. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

Failure To Answer

In suit by client against his attorney for money which attorney failed to forward to client, request for admissions were deemed admitted where attorney failed to answer. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

References

Olson v. City Commission of City of Helena, 146 M 386, 407 P 2d 374.

Rule 37. Refusal to make discovery—Consequences.

(a) REFUSAL TO ANSWER.

Appellate Review

An appellate court will reverse a trial court judge, who has refused to invoke the sanctions of this section, only when his judgment may materially affect the substantial rights of the parties and allow a possible miscarriage of justice. Wolfe v. Northern Pacific Ry. Co., 147 M 29, 409 P 2d 528.

Judge's Discretion

It was not an abuse of discretion for trial judge to allow witness for oil refinery to testify as to condition of ground about railroad tracks where plaintiff-switchman crushed his hand beneath wheel of oil tank car when he allegedly slipped in oil or grease on concrete walkway of refinery in trying to mount the train, even though railroad had not included witness' name in its answer to plaintiff's interrogatories, since witness was the oil refinery's and plaintiff, knowing oil refinery had been joined as a third-party defendant, had failed to seek disclosure from it, or a pretrial conference, and had allowed other witnesses to testify to the same matter at trial. Wolfe v. Northern Pacific Ry. Co., 147 M 29, 409 P 2d 528.

VI. TRIALS

Rule 41. Dismissal of actions.
43. Evidence.
44. Proof of official record.
44.1. Determination of foreign law.
46. Exceptions unnecessary.
47. Jurors.
50. Motion for a directed verdict and for judgment notwithstanding the verdict.
52. Findings by the court.

Rule 38. Jury trial of right.

(a) RIGHT RESERVED.

Declaratory Judgment

A party has a right to a jury trial on demand where the suit is for a declaratory judgment and there are triable issues of fact. Mahan v. Hardland, 147 M 78, 410 P 2d 156.

Rule 39. Trial by jury or by the court.

(c) ADVISORY JURY AND TRIAL BY CONSENT.

New Trial

In an equity action for specific performance tried before an advisory jury, where the court granted defendant's motion for a new trial, the court was not required to order that the new trial be by jury as had the original proceedings. Waite v. Waite, 143 M 248, 389 P 2d 181.

Rule 41. Dismissal of actions.

(a) VOLUNTARY DISMISSAL—EFFECT THEREOF.

Dismissal As Affecting Counterclaim

Motion to dismiss complaint was properly granted where counterclaiming defendant did not object to dismissal, where trial was in fact had on defendant's counterclaim and where defendant in fact obtained judgment against plaintiff on counterclaim. Ratcliff v. Murphy, 150 M 31, 430 P 2d 627.

References

Vennes v. Nollmeyer, 144 M 43, 394 P 2d 178.

(b) INVOLUNTARY DISMISSAL—EFFECT THEREOF. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or failure to join a party under Rule 19, operates as an adjudication upon the merits.

History: En. Sec. 41, Ch. 13, L. 1961; amd. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 inserted "in an action tried by the court without a jury" before "has completed" in

the second sentence and deleted the same phrase from the beginning of the third sentence; and, in the last sentence, substituted "failure to join a party under Rule 19" for "for lack of an indispensable party."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 41(b), as amended 1963 and 1966.

Explanation of change: Under the prior text of the second sentence of this subdivision [Rule 41(b)], the motion for dismissal at the close of the plaintiff's evidence may be made in a case tried to a jury as well as in a case tried without a jury. But when made in a jury-tried case, this motion overlaps the motion for a directed verdict under Rule 50(a), which is also available in the same situation. This overlap has caused confusion. Accordingly it is amended to provide that the motion for dismissal at the close of the plaintiff's evidence shall apply only to nonjury cases (including cases tried with an advisory jury). Hereafter the correct motion in jury-tried cases would be a motion for a directed verdict. This amendment involves no change of substance.

The first sentence of Rule 41(b), providing for dismissal for failure to prosecute or to comply with the Rules or any order of court, and the general provisions of the last sentence remain applicable in jury as well as nonjury cases.

This amendment also changes the last sentence of this subdivision to accord with the amendment to Rule 19.

Failure To Prosecute

Trial court abused discretion in dismissing action for failure of plaintiff to prosecute where case was returned by supreme court to lower court for new trial but trial court failed to set it for trial at next jury term as per order of supreme court. Jangula v. United States Rubber Co., 149 M 241, 425 P 2d 319.

Case was properly dismissed for failure of plaintiff to prosecute where nothing was done to bring it to trial for over twelve years despite fact that defendant had shown no injury by delay, that attorneys had agreed to get together and try to work out agreement and that defendant had filed cross-complaint which was defensive in character. Cremer v. Braaten, 151 M 18, 438 P 2d 553.

Failure To State a Claim

This rule has no application to a motion to dismiss for failure to state a claim under Rule 12(b). Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 750.

Findings and Conclusions

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with the Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. Mondakota Gas Co. v. Becker, 151 M 513, 445 P 2d 745.

Insufficiency of Evidence

District court erred in not granting defendant's motions for dismissal and directed verdict where evidence, viewed in light most favorable to plaintiff, did not support verdict for him. MacDonald v. Protestant Episcopal Church, 150 M 332, 435 P 2d 369.

Defendant was entitled to have motion for involuntary dismissal granted where plaintiff wholly failed to establish prima facie case of negligence. Knowlton v. Sandaker, 150 M 438, 436 P 2d 98.

References

Whitcraft v. Semenza, 145 M 97, 399 P 2d 757.

DECISIONS UNDER FORMER LAW

Insufficient Evidence

Where plaintiff's property was damaged by the dropping of fire retardant from airplanes and at the trial he failed to show the lack of proper care under the circumstances, the trial court properly nonsuited plaintiff upon defendant's motion. Stocking v. Johnson Flying Service, 143 M 61, 387 P 2d 312.

No cause should be withdrawn from the jury unless evidence is susceptible of but one construction by reasonable men and that in favor of the defendant, or the evidence is in such condition that if the jury returned a verdict in favor of the plaintiff, it would be the court's duty to set it aside. Jackson v. William Dingwall Co., 145 M 127, 399 P 2d 236.

Trial court properly granted directed verdict for defendant, employer and ranch foreman, where plaintiff, a ranch hand, was injured while riding atop a bobsled loaded with hay, since plaintiff failed to make out a prima facie case that tipping of bobsled was due to negligence. Jackson v. William Dingwall Co., 145 M 127, 399 P 2d 236.

(e) FAILURE TO SERVE SUMMONS. No action heretofore or hereafter commenced shall be further prosecuted as to any defendant who

has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced, and no further proceedings shall be had therein, and all actions heretofore or hereafter commenced shall be dismissed by the court in which the same shall have been commenced, on its own motion, or on the motion of any party interested therein, whether named in the complaint as a party or not, unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court within three years after the commencement of said action, or unless appearance has been made by the defendant or defendants therein within said three years. When more than one defendant has been named in an action, the action may within the discretion of the trial court be further prosecuted against any defendant who has appeared within three years, or upon whom summons which has been issued within one year has been served and return made and filed with the clerk within three years as herein required.

History: En. Sec. 1, Ch. 111, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "as to any defendant who has not appeared in the action or been served in the action as herein provided within three years after the action has been commenced" in the first part of the first sentence; substituted "unless summons shall have been issued within one year, or unless summons issued within one year shall have been served and return made and filed with the clerk of the court" for "summons shall have been served and return made" in the latter part of the first sentence; and added the second sentence.

Commission Note to 1965 Amendment

This clarifies and brings together the laches provisions with respect to issuance and service of summons. At present Rules 4 C(1), 41(e), Section 93-3002, R. C. M. 1947, and Rule 12(b) all need to be referred to. This amendment incorporates the laches provision of Section 93-4705 (7), R. C. M. 1947, which was repealed by Chapter 13 of the 1961 Session Laws.

This amendment renders Section 93-3002, R. C. M. 1947, unnecessary, and that section superseded and added to Tables B and C.

How Raised

Where return was made more than three years after commencement of action, this subsection, since it is not a statute of limitations, could be raised by motion under Rule 12(b), rather than pleaded as an affirmative defense. Whitcraft v. Semenza, 145 M 94, 399 P 2d 757.

Pending Actions

Even though there was a lapse of a year between repeal of former section 93-4705, R. C. M. 1947, and adoption of this rule, which is identical, application of this rule to a pending action in which return was made more than three years after commencement of the action was proper, since not only was a reasonable time allowed before the effective date of the change, but the information was widely distributed. Whitcraft v. Semenza, 145 M 94, 399 P 2d 757.

Probate Matters

Rule does not apply to service of summons in suit on rejected claim in probate which is governed exclusively by statute providing for contesting rejected claims in probate. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Renewal of Claim

A judgment is not res judicata unless it is on the merits, so that a dismissal under this rule, since it is not a statute of limitations, does not constitute a bar to another suit on the same claim. Whitcraft v. Semenza, 145 M 94, 399 P 2d 757.

Statute of Limitations

Dismissal under this rule for failure to have summons issued within one year after commencement of the action is a dismissal for neglect to prosecute within the meaning of section 93-2708: that section does not operate to permit the commencement of a new action after expiration of the statute of limitations. State ex rel. Equity Supply Co. v. District Court, — M —, 494 P 2d 911.

DECISIONS UNDER FORMER LAW

Quashing Summons

District court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the three years required by this rule prior to 1965 amendment. State ex rel. Belwin, Inc. v. Davison, 148 M 345, 420 P 2d 842, 844.

Rule 42. Consolidation—Separate trials.

(b) SEPARATE TRIALS.

Abuse of Discretion

In wrongful death and survival action trial court abused its discretion by denying motion for separate trial on issue of validity of release where separate trials would result in convenience and economy of time to parties, witnesses and court and since possible finding that release was valid would end matter and trial of complicated issue of wrongful death and survival would be avoided. State ex rel. Northern Pacific R. Co. v. District Court of Sixteenth Judicial District in and for County of Rosebud, 155 M 91, 467 P 2d 145.

Discretion of Court

Grant of separate trial under this section on counterclaims on matters unrelated to plaintiff's complaint was within discretion of district judge and was not disturbed since no clear abuse of discretion was apparent. State ex rel. Rooks v. District Court, 153 M 189, 456 P 2d 308.

Insurance Coverage

Federal court dismissed action for declaratory judgment declaring obligations of casualty insurance company under an automobile insurance policy, which allegedly had been canceled prior to the time of the accident involving the automobile of the insured who was being sued for injuries resulting from the accident in the state court, since the issues, which did not involve federal law, could be solved in the state court wherein third-party complaint under M. R. Civ. P., Rule 14(a), had been filed by the insured against the insurer in which insured sought to hold the insurer to the terms of the policy, where state court could dispose of the coverage problem first under this rule. Western Casualty & Surety Co. v. Pinson, 255 F Supp 624, 625.

Permissive Joinder

Since this section allows for separate trials, practically, it seems desirable to give the broadest possible reading to the permissive language of Rule 20. Wheat v. Safeway Stores, Inc., 146 M 105, 404 P 2d 317.

Successor Judge

Disqualification of district judge did not render res judicata or the law of the case his previous ruling denying severance of claims against different defendants; successor judge could reconsider and grant severance. State ex rel. Stenberg v. Nelson, 157 M 310, 486 P 2d 870.

References

Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

Rule 43. Evidence.

(b) SCOPE OF EXAMINATION AND CROSS-EXAMINATION.

Agent of Opposing Party

District court properly permitted plaintiff to examine driver for company under contract with defendant as an adverse witness under this section, for the purpose of establishing the driver's negligence to be imputed to the defendant, because under the applicable Federal Employer's Liability Act the driver was an agent of the defendant. Salvail v. Great Northern Ry. Co., 156 M 12, 473 P 2d 549.

Plaintiff Called as Defense Witness

Where plaintiff appeared as her own only witness and was not cross-examined by the defendant who then called her as a defense witness, the defense was bound by her testimony even though it came after the plaintiff herself had rested her case. Close v. Ruegsegger's Estate, 143 M 32, 386 P 2d 739.

Statutory Proceedings

In statutory action brought to remove administrator for misappropriation of funds of estate, administrator could be examined as adverse witness since Rule 81, excluding statutory proceedings from Rules of Civil Procedure to extent that statutory proceedings are contrary to Rules, does not bar examination of administrator as adverse witness. In re Estate & Guardianship of Wyman, 149 M 525, 429 P 2d 629.

(e) EVIDENCE ON MOTIONS.

Summary Judgments

Oral testimony may be heard on motions for summary judgment. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

(f) INTERPRETERS. The court may appoint an interpreter of its own selection and may fix his reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 43(f), as amended 1966.

Explanation of change: This new subdivision authorizes the court to appoint interpreters (including interpreters for the deaf), to provide for their compensation, and to tax the compensation as costs.

Rule 44. Proof of official record.

(a) AUTHENTICATION.

(1) Domestic. An official record kept within the United States, or any state, district, commonwealth, territory, or insular possession thereof, or within the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office.

(2) Foreign. A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote all but the first sentence of this rule and divided it into two clauses; in

the first sentence, the amendment inserted "kept within the United States * * * Ryukyu Islands" and substituted "by" for "with" before "a certificate that."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: The new provisions of subdivision (a)(1) on proof of official records kept within the United States are similar in substance to those heretofore appearing in Rule 44. There is a more exact description of the geographical areas covered.

Under subdivision (a)(2) foreign official records may be proved as heretofore, by means of official publications thereof. The rest of subdivision (a)(2) aims to provide greater clarity, efficiency, and flexibility in the procedure for authenicating copies of foreign official records. It is provided that an attested copy may be obtained from any person authorized by the law of the foreign country to make the attestation without regard to whether he is charged with responsibility for maintaining the record or keep it in his custody. The amendment specifically permits use of the chain-certificate method of authentication.

Although the amended rule will generally facilitate proof of foreign official records, it is recognized that in some situations it may be difficult or even impossible to satisfy the basic requirements of the rule. Therefore the final sentence of subdivision (a)(2) provides the court with discretion to admit an attested copy of a record without a final certification, or an attested summary of a record with or without a final certification. Reasonable effort must be made to satisfy the basic requirements.

(b) LACK OF RECORD. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 rewrote this rule. For text of former rule, see parent volume.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 44, as amended 1966.

Explanation of change: Subdivision (b) [Rule 44(b)] is accommodated to the changes made in subdivision (a) [Rule 44(a)].

(c) OTHER PROOF. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law.

History: En. Sec. 44, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "authorized by law" for "any applicable statute or by the rules of evidence at common law."

Rule 44.1. Determination of foreign law.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 44.1, as adopted 1966.

Explanation of change: This is new and clears up uncertainty as to whether foreign law must be pleaded. Under this rule the notice need not be given in the pleadings.

The rule affords a procedure for raising and determining an issue of foreign law. It does not require the court to take judicial notice of the foreign law.

The rule appears to be consistent with and complementary to Rule 9(d) and R. C. M. 1947, section 93-501-6.

Power of Court

Under this section, trial court has power to fashion procedures for determination of whether reciprocity of transfer and reciprocity of inheritance exists between citizens of state and citizens of foreign country. In re Estate of Giurgiu, 155 M 18, 466 P 2d 83, appeal dismissed 399 US 901, 26 L Ed 2d 555, 90 S Ct 2195.

Rule 46. Exceptions unnecessary.

Formal exceptions to rulings, orders, or findings of the court are unnecessary; but for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which he desires the court to take, or his objection to the action of the court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

History: En. Sec. 46, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1969 amendment inserted "Except as provided in Rule 52, with respect to findings by the court" at the beginning of the section.

The 1971 amendment deleted the language inserted by the 1969 amendment and inserted "or findings" in the first clause of the rule.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: The attention of the Committee has been invited to considerable confusion existing under the old wording of this rule, of Rule 52, and of Section 93-5305, R. C. M. 1947, which statute is now being superseded. It is thought by rewriting Rule 46 and Rule 52 the existing confusions can be avoided.

DECISIONS UNDER FORMER LAW

Exceptions to Findings and Conclusions

Effect of rule providing that formal exceptions are unnecessary but requiring aggrieved party to make objections and grounds therefor known to court, when considered with statute providing that no judgment will be reversed on appeal for defects in findings unless exceptions are made to findings complained of in lower court, is that counsel must point out exceptions to findings on motions where court is required to make findings of fact and conclusions of law so that trial court may have opportunity to correct them and upon failure to do so, findings become final and judgment will not be reversed. Stapp v. Nickels, 150 M 220, 434 P 2d 141, distinguished in 157 M 295, 299, 485 P 2d 703.

Rule 47. Jurors.

(b) MANNER OF SELECTION AND ORDER OF EXAMINATION OF JURORS. From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel

of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of twelve persons and the determined number of alternates shall remain to make up the trial jury.

History: En. Sec. 47, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 inserted "and the juror called * * * who has been excused" in the second sentence.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: In some judicial districts the practice is that the replacement juror takes a new number at the bottom of the list, in others the replacement takes the same number as the juror excused. This amendment expressly adopts the latter and makes the practice uniform throughout the state.

Rule 50. Motion for a directed verdict and for judgment notwithstanding the verdict.

(a) MOTION FOR DIRECTED VERDICT—WHEN MADE, EFFECT. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence, giving effect to an order for directed verdict even without the jury's assent.

Advisory Committee's Note to September, 29, 1967 Amendment

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The practice, after the court has granted a motion for a directed verdict, of requiring the jury to express assent to a verdict they did not reach by their own deliberations serves no

useful purpose and may give offense to members of the jury.

Circumstances Under Which Motion Should Be Granted

Denial of motion for directed verdict, made by lessor of destroyed building in suit by lessee claiming that premises were repairable, was cause for reversal where, viewing evidence most favorable to plaintiff lessee and considering as proven everything which evidence tended to prove, reasonable man could come to no other conclusion but that building involved was destroyed. Solich v. Hale, 150 M 358, 435 P 2d 883.

Granting Motion at End of Plaintiff's Case

Court erred in granting plaintiff's motion for directed verdict before defendant had opportunity to present his case, where defendant was precluded from offering evidence to rebut presumption of negligence raised by plaintiff's case in chief based on doctrine of res ipsa loquitur, notwithstanding fact that plaintiff had examined all witnesses to accident during his case in chief. Baker v. Rental Service Co., 150 M 166, 432 P 2d 624.

Refusal to Grant Motion

Party who alleges error in refusing his motion under this section had burden of showing that error was in fact committed. Fuchs v. Huether, 154 M 11, 459 P 2d 689.

Waiver of Jury Trial

Where both parties in jury trial moved for directed verdict at the close of evidence, trial court improperly granted plaintiff's motion, since there were factual issues for jury to decide and since, under this section, a motion for a directed verdict is not a waiver of trial by jury. Borgmann v. Diehl, 155 M 458, 473 P 2d 529.

(b) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Not later than 10 days after service of notice of entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned such party, within 10 days after the jury has been discharged, may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.

History: En. Sec. 50, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of September 7, 1965 added the second paragraph.

The amendment of September 29, 1967 substituted the present heading for "Reservation of decision on motion" and, in the second sentence of the first paragraph, substituted "Not later than 10 * * * judgment" for "Within 10 days after the reception of a verdict."

The amendment of May 21, 1969, in the second paragraph, substituted "Rule 59 * * * for new trial" for "Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for new trial."

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for a directed verdict made at the close of all the evidence.

This departs from the federal amendment in providing that the time limit for making a motion for judgment n.o.v. is 10 days after service of notice of entry of judgment, rather than 10 days after entry of judgment as provided in the federal amendment. This is consistent with the provisions of Rules 59(b) (time for motion for a new trial) and 52(b) (time for motion to amend findings by the court).

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: A housekeeping change to conform with superseding section 93-5606, R. C. M. 1947, by the amendment of Rule 59.

Refusal to Grant Motion

Party alleging error in refusing his motion under this section had burden of showing that error was in fact committed. Fuchs v. Huether, 154 M 11, 459 P 2d 689.

(c) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—CONDITIONAL RULINGS ON GRANT OF MOTION.

(1) If the motion for judgment notwithstanding the verdict, provided for in subdivision (b) of this rule, is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court.

(2) The party whose verdict has been set aside on motion for judgment notwithstanding the verdict may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment notwithstanding the verdict.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: The procedure where a party joins a motion for a new trial with his motion for judgment n.o.v., or prays for a new trial in the alternative has often been misunderstood. This amendment summarizes the practice. It does not alter the effects of a jury verdict or the scope of appellate review.

(d) MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—DENIAL OF MOTION. If the motion for judgment notwithstanding the verdict is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling him to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment notwithstanding the verdict. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

History: En. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Advisory Committee's Note

Source: Fed. R. Civ. P. 50, as amended 1963.

Explanation of change: This subdivision does not attempt a regulation of all aspects of the procedure where the motion for judgment n.o.v. and any accompanying motion for a new trial are denied, since the problems have not been fully canvassed in the decisions and the procedure is in some respects still in a formative stage. It is, however, designed to give guidance on certain important features of the practice.

Rule 51. Instructions to jury—Objection.

Preserving for Review

Appellant who objected to jury instruction but did not specifically object to an interchange of words therein did not preserve review of the interchange. Cross v. Trethewey, 155 M 337, 471 P 2d 538.

Objections to jury instructions made at trial on grounds of insufficient evidence to support the instructions but not pointing out how the evidence was insufficient, did not preserve the question for review on appeal. Salvail v. Great Northern Ry. Co., 156 M 12, 473 P 2d 549.

Plaintiff's contention on appeal which is clearly an objection to instruction in trial court will not be considered by supreme court where plaintiff failed to object to instruction in trial court. Roberts Realty Corp. v. City of Great Falls, — M —, 500 P 2d 956.

Refusal to Give Instructions

Denial of offered instructions which were adaptable to defendant's theory of the case was prejudicial error where such denial deprived him of a possible defense of assumption of risk. Wollan v. Lord, 142 M 498, 385 P 2d 102, distinguished in 145 M 486, 488, 402 P 2d 41.

It is not error for the trial judge to refuse to give specific instruction where the subject in question has been adequately covered by other instructions. Holland v. Konda, 142 M 536, 385 P 2d 272, 6 ALR 3d 824.

Contention that trial court erred by not instructing jury on defendant's duties toward trespasser was without merit where such instruction was not offered by plaintiff as required by this section. Gunderson v. Brewster, 154 M 405, 466 P 2d 589.

Rule 52. Findings by the court.

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1969 amendment rewrote the first part of the rule and made it into a separate paragraph requiring that findings be reduced to writing and served on the parties.

The 1971 amendment restored the language as it stood prior to the 1969 amendment, with minor changes; and inserted new provisions as the second, third and fifth sentences.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Sections 93-5302, 93-5305, 93-5306, and 93-5307, R. C. M. 1947, are hereby superseded. The purpose of changing Rule 52, along with the change made in Rule 46, is twofold. It should eliminate the confusions that now exist with respect to the lack of necessity

of making exceptions to the rulings and orders of the court, as distinct from the requirement that appropriate exceptions be made to findings of the court on trial of fact issues. In addition, it incorporates in this one rule the existing practice and procedure with respect to exceptions to findings of the court, and eliminates the necessity of researching for, and referring separately to, controlling statutes, case decisions, and rules, and then trying to correlate all three.

Appellate Review of Findings

Findings of fact made by trial court will not be disturbed where they are supported by preponderance of evidence. Western Foundry, Inc. v. Matelich, 150 M 228, 433 P 2d 789.

Sufficiency of Findings

Lower court ruling that "no cause of action or claim exists or has been proven" and "the same is hereby dismissed" was sufficient compliance with Rules despite plaintiff's contention that findings of fact and conclusions of law did not meet requirements of Rules. Mondakota Gas Co. v. Becker, 151 M 513, 445 P 2d 745.

Summary Judgment

Even though findings are not required in granting summary judgment, if findings are made that form the basis for judgment and if the evidence does not support the findings, the judgment will be reversed. Upper Missouri G & T Electric Cooperative v. McCone Electric Co-op., Inc., 157 M 239, 484 P 2d 741.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698; Tolson v. Tolson, 145 M 87, 399 P 2d 754.

(b) AMENDMENT. Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

History: En. Sec. 52, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, May 21, 1969, eff. July 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The amendment of August 1, 1965 inserted "service of notice of" before "entry of judgment" in the first sentence.

The amendment of September 7, 1965 added a second paragraph providing that motions to amend should be heard and determined within the time for determining motions for new trial as provided by section 93-5606.

The 1969 amendment rewrote the rule to require that parties file written requests for findings, to remove as ground for appeal the want of findings not requested by the party, and to provide for exceptions to findings and the determination thereof.

The 1971 amendment restored the language as it stood prior to the 1965 amendments; inserted "notice of" before "entry of judgment" in the first sentence; and added new language as the third sentence.

Commission Note to August 1, 1965 Amendment

Under Rule 77(d) the prevailing party has 10 days after the entry of judgment to give the unsuccessful parties notice of such entry. The change in 52(b) is an adjustment to this provision, and is designed to meet the possibility that the prevailing party is the only party that knows of the entry of the judgment and waits 10 days before giving the unsuccessful party notice of such entry. The provision is similar to that found in Rule 59(b) and (e).

Advisory Committee's Note to May 21, 1969 Amendment

See Advisory Committee's Note under Rule 52(a).

Amendment of Findings and Judgment

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment combined with a motion for a new trial, filed on September 28, 1965, was a motion contemplated by

this rule and Rule 59(e) and was not governed by the time limits of section 93-5606. State ex rel. Rozan v. District Court of Sixteenth Judicial Dist., 147 M 532, 416 P 2d 19, 21.

References

Sztaba v. Great Northern Ry. Co., 147 M 185, 411 P 2d 379.

DECISIONS UNDER FORMER LAW

Exceptions Required for Reversal

Under former statute which was superseded by this Rule, objections to findings of district court could not be raised for the first time upon appeal. Rozan v. Rosen, 150 M 121, 431 P 2d 870.

Mandate of former statute (superseded by this Rule) that findings of district court would not be reviewed on appeal unless exceptions were taken was not changed by fact that counsel on appeal was not same counsel who tried case in district court. Olsen v. United Benefit Life Ins. Co., 150 M 147, 432 P 2d 381.

Rule providing that formal exceptions are unnecessary if aggrieved party makes his objections and grounds therefor known to court and former statute (superseded by this Rule) providing that no judgment will be reversed on appeal for defects in findings unless exceptions are made in lower court were required to be read together with result that it was necessary for counsel to point out exceptions to findings so that trial court might have opportunity to correct them and failure to do so meant findings became final and judgment would not be reversed. Stapp v. Nickels, 150 M 220, 434 P 2d 141.

Under former statute, failure to except to findings of trial court made them final and judgment would not be reversed. Keller v. Martin, 153 M 9, 452 P 2d 422.

Under former statute, exceptions had to be made to trial court's defects in findings to give trial court opportunity to correct them or they would become final and not subject to appeal. In re Estate of Dolezilek, 156 M 224, 478 P 2d 278.

Prior to 1971 amendment, no judgment would be reversed on appeal for defects in findings unless exceptions had been made in district court. State ex rel. Bennett v. Dowdall, 157 M 11, 482 P 2d 572.

Prior to 1971 amendment, failure to except to findings of district court was fatal to appeal. Sorenson v. Lynch, 157 M 116, 483 P 2d 907.

Prior to the 1971 amendment dismissal for failure to except to findings is the unavoidable result only in cases where the findings control, and in those instances they cannot be questioned on appeal; however, where the findings do not control, appellants' failure to file exceptions does not require dismissal. Kretzschmar v. Bickerstaff, 158 M 178, 489 P 2d 1285.

Prior to 1971 amendment, failure to file exceptions to court's finding within the time prescribed by this rule did not preclude appeal where party called attention of the court to the alleged errors in the findings by way of a motion to amend the judgment, coupled with a motion for new trial, which was timely served and filed. Cope v. Cope, 158 M 388, 493 P 2d 336.

(c) Repealed.

Compiler's Notes

Supreme Court Order No. 10750-9, dated May 21, 1969, created a new Rule 52 (c) requiring statement of conclusions of law and entry of judgment. Supreme Court Order No. 10750-10, dated October 22, 1971, effectively repealed Rule 52 (c) by omitting it from Rule 52 as amended.

Rule 53. Masters.

(e) REPORT.

Hearing on Report

No hearing is necessary when no objections are made to report by parties after being notified by clerk that special master has filed his report. State ex rel. Ross v. District Court, Fourth Judicial District, 150 M 233, 433 P 2d 778.

VII. JUDGMENT

Rule 55. Default.
56. Summary judgment.
59. New trials—Amendment of judgments.
60. Relief from judgment or order.

Rule 54. Judgments—Costs.

(b) JUDGMENT UPON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES.

Amendment To Include Codefendant

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, judgment which omitted to name defaulting codefendant who was jointly and severally liable on obligation. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

Separate Claims on Note and Mortgage

Upon default in an action against the unconditional guarantors of a note and to foreclose mortgage securing the note, the holder of the note could properly proceed at its option against either security in the same action. Bozeman Deaconess Foundation v. Cowgill, 143 M 98, 387 P 2d 435.

References

State ex rel. Kober and Kyriss v. District Court, 147 M 116, 410 P 2d 945.

(c) DEMAND FOR JUDGMENT.

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of this rule, an appeal on those grounds was dismissed by supreme court upon its own motion where no application to set aside default or judgment was made under Rule 60(b). Sowerwine v. Sowerwine, 148 M 195, 418 P 2d 859, 861.

Where pleadings of both parties in divorce proceedings showed that they expected the court to make orders relative to the property, the court had authority to vest all the property in the husband and order alimony paid where justified by the facts, even though neither party had asked for that specific disposition. Libra v. Libra, 157 M 252, 484 P 2d 748.

(d) COSTS.

Costs Not Allowed

Section 93-8618 particularly enumerates allowable costs under this rule; where cost of taking plantiff's deposition was made merely for the convenience of defendant's counsel, defendant cannot include such cost in his bill of costs because deposition was for his benefit; deposition was never filed with the district court and plaintiff's counsel did not have any practical means of securing a copy. Johnson v. Furgeson, 158 M 170, 489 P 2d 1032.

Rule 55. Default.

(a) ENTRY.

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

(b) JUDGMENT. Judgment by default may be entered as follows:

(1). * * * [Same as parent volume.]

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall

be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.

History: En. Sec. 55, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "an" before "account" in the final sentence of paragraph (2).

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

Clerk's Error

Entry of default judgment by clerk of court without requiring affidavit from plaintiff of amount due and owing rendered the judgment voidable but not void. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Motion to set aside default judgment because of plaintiff's failure to file affidavit of amount due and owing when it requested entry of default judgment was properly denied where defendant permitted judgment to be satisfied from her property, and no reason to avoid the voidable judgment had been presented. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Under Rule 61 omission of clerk of court to require affidavit of amount due under this rule before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Divorce Proceedings

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with this rule and no relief different from that demanded in the complaint was granted in violation of M. R. Civ. P., Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under Rule 60(b). Sowerwine v. Sowerwine, 148 M 195, 418 P 2d 859, 861.

Ministerial Function

Clerk of court in entering a default judgment is performing a ministerial function and must follow procedures in detail and absolutely. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Nonprejudicial Error

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by paragraph (2) of this rule and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under M. R. Civ. P., Rule 55(c). Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 94.

(c) DEFAULT — SETTING ASIDE — EXTENSION OF TIME, ETC.

Answer Filed after Entry by Clerk

Plaintiff was entitled to judgment by default where defendants filed answer after entry of default by clerk and receipt of notice of hearing on motion for default, but before actual hearing on the motion, since entry of default by clerk requires no notice to party in default, answer was filed after defendants had received notice of motion for default and defendants failed

to move to set aside entry of default for "good cause shown" as they were entitled to do under rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment filed under this rule. Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 94.

Voidable Judgments

A default judgment entered prematurely pursuant to this section could not be set aside under M. R. Civ. P., Rule 60(b)(4), since Rule 60(b)(4) applies to void and not voidable judgments. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151.

DECISIONS UNDER FORMER LAW

Terms of Opening of Default

Fact that corporate defendant claimed sheriff had never served summons upon the corporation, sheriff did not remember service of the summons, and default was not taken until seven years after the plaintiff was injured constituted clear, unequivocal and convincing proof to rebut weight accorded sheriff's return of service of process under section 16-2707 to open default judgment. Sewell v. Beatrice Foods Co., 145 M 337, 400 P 2d 892.

Rule 56. Summary judgment.

(a) FOR CLAIMANT.

Negligence Actions

Ordinarily, issue of negligence is not susceptible of summary adjudication but should motion for summary judgment be made, burden is on moving party to establish clearly that there is no factual issue to be determined and opposing party does not have burden of showing prima facie case. Mally v. Asanovich, 149 M 99, 423 P 2d 294.

(b) FOR DEFENDING PARTY.

Denial of Motion

In suit by guardians of patient for personal injuries sustained when patient was being X-rayed, district court erred in granting defendant-hospital's motion for summary judgment where there was an issue of fact as to whether radiologist was an independent contractor rather than an agent of the hospital. Kober v. Stewart, 148 M 117, 417 P 2d 476, 479.

Support Proceedings

Defendant was properly granted motion for summary judgment in action to enforce amount agreed upon for support in separation agreement which had been reduced by subsequent court modifications. Gessell v. Jones, 149 M 418, 427 P 2d 295.

References

Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

(c) MOTION AND PROCEEDINGS THEREON. The motion shall be served at least 10 days before the time fixed for the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Affidavits shall not be considered for any purpose on motion for summary judgment. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

History: En. Sec. 56, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965.

Amendment

The 1965 amendment inserted "answers to interrogatories" in the first sentence.

Commission Note to 1965 Amendment

The amendment expressly includes "answers to interrogatories" among material which may be considered on motion for summary judgment. This conforms to an amendment to the Federal Rule adopted January 21, 1963, the Federal Rule having inadvertently omitted the phrase. The courts have generally reached by interpretation the result required by the amendment.

Affidavits

Affidavit of superintendent of banks will be struck from record on appeal from a summary judgment because under this rule it could not have been considered by the trial court in ruling on motion for summary judgment. Miners & Merchants Bank v. Dowdall, 158 M 142, 489 P 2d 1274.

Burden of Proof

The moving party for a summary judgment has the burden of showing the absence of any genuine factual issue. Kober v. Stewart, 148 M 117, 417 P 2d 476, 478.

Matters Considered

While this rule does not mention oral testimony as material to be used at the summary judgment hearing, Rule 43(e) permits the use of oral testimony upon motions, so that oral testimony may be considered upon a motion for summary judgment. Daniels v. Paddock, 145 M 207, 399 P 2d 740.

In case in which plaintiff's deposition alone was sufficient to permit the trial judge to determine that the case contained no issue of material fact or controversy relating to the testatrix's incompetency, the trial court was correct in granting summary judgment and had no duty to anticipate possible proof that might have been offered under the pleadings. Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

Where trial court was present during taking of depositions, facts heard by court were properly considered on motion for summary judgment pursuant to this section since oral testimony is properly within matters which court may consider under such motion. Citizens State Bank v. Duus, 154 M 18, 459 P 2d 696.

Although fact that both parties moved for summary judgment does not establish that all factual questions have been answered, trial court need only consider evidence and issues presented and has no duty to anticipate possible proof that might be offered under the pleadings. Faith Lutheran Retirement Home v. Veis, 156 M 38, 473 P 2d 503.

Pleadings Not Controlling

On a motion for summary judgment the formal issues presented by the pleadings are not controlling and the court must consider the depositions, answers to interrogatories, and admissions on file, oral testimony and exhibits presented. Hager v. Tandy, 146 M 531, 410 P 2d 447.

Principal and Agent

Purported agent and principal were entitled to summary judgment where plaintiff wholly failed to establish prima facie case of negligence on the part of either even though evidence raised question of fact as to existence of agency since it would be impossible to impute negligence to principal where negligence had not been established against supposed agent. Knowlton v. Sandaker, 150 M 438, 436 P 2d 98.

Proof of Issue of Fact

Motion for summary judgment was properly granted where it was apparent from record that there was no genuine issue as to any material fact, notwithstanding aggrieved party's argument on appeal that had he been allowed to go to trial he would have presented proofs establishing genuine issue of fact, since aggrieved party presented no such proofs at hearing on original motion nor at hearing on motion to vacate judgment. Brown v. Thornton, 150 M 150, 432 P 2d 386.

Trial court, in action on farm lease, construing lessor's motion for dismissal as motion for summary judgment, improperly granted summary judgment where lessor failed to sustain burden of showing absence of any genuine issue as to material facts; record on appeal was replete with issues of fact determinable by jury. Byrne v. Plante, 154 M 6, 459 P 2d 266.

In an action for injuries allegedly caused by negligence of contractor and his agents, trial court properly granted summary judgment pursuant to this section where record revealed total absence of negligence on part of defendant or its employees and record revealed that nothing defendant did or failed to do was proximate cause of plaintiff's injuries. Flansberg v. Montana Power Co., 154 M 53, 460 P 2d 263.

Summary judgment for defendant was proper where contract clearly prohibited competing activities only on specific premises and plaintiff admitted in his answers to interrogatories that the activities he sought to prevent were outside the premises. Matteucci's Super Save, Drug v. Hustad Corp., 158 M 311, 491 P 2d 705.

Purpose

The general purpose of this rule is to dispose promptly of actions in which

there is no genuine issue of fact, thereby eliminating unnecessary trial, delay, and expense. Silloway v. Jorgenson, 146 M 307, 406 P 2d 167.

Questions of Fact

Allegation by vendees of direct misrepresentation as to acreage they were being sold raised material issue of fact for the jury precluding summary judgment in action to cancel contract for deed and reinvest title in vendors. Eisemann v. Hagel, 157 M 295, 485 P 2d 703.

Summary judgment was not proper where pleadings in declaratory judgment action to invalidate municipal vacation of streets left triable issues of fact as to whether plaintiffs' easements would be impaired by vacation. Kemmer v. City of Bozeman, 158 M 354, 492 P 2d 211.

Liability cannot be adjudicated upon motion for summary judgment where factual issues concerning negligence and causation are presented. Duchesneau v. Silver Bow County, 158 M 369, 492 P 2d 926.

Res Judicata

Where supreme court affirmed lower court judgment dismissing complaint for failure to state a claim upon which relief could be granted under Rule 12(b), the judgment was not res judicata as to a second amended complaint under this section where matters outside the pleadings were presented to and not excluded by court. Rambur v. Diehl Lumber Co., 144 M 84, 394 P 2d 745, 749.

Third Party Complaint

Summary judgment should not have been granted in favor of third party defendant on third party complaint initiated by hospital sued for negligence by minor patient burned by defective television switch while in hospital where third party complaint raised genuine issue of material fact as to whether minor patient was injured solely through negligence of third party defendant who had leased television equipment to hospital. Crosby v. Billings Deaconess Hospital, 149 M 314, 426 P 2d 217.

References

Brannon v. Lewis and Clark County, 143 M 200, 387 P 2d 706.

(d) PLAINTIFFS, COUNTERCLAIMANTS, CROSS-CLAIMANTS.

Declaratory Judgment

In declaratory judgment action in which notice of reclassification was found not to comply with statutory requirements, district court did not abuse its discretion in granting plaintiff-landowners' motion for summary judgment without considering further issues on the power to reclassify since plaintiffs lacked standing as to those issues. Mittelstadt v. Buckingham, 156 M 407, 480 P 2d 831.

Rule 57. Declaratory judgments.

References

Harrer v. Northern Pacific Ry. Co., 147 M 130, 410 P 2d 713; Empire Fire & Marine Ins. Co. v. Goodman, 147 M 396, 412 P 2d 569.

Rule 59. New trials—Amendment of judgments.

(a) GROUNDS. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana. On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 made no change in this rule.

Appellate Review

In condemnation proceeding, where state appraised land at $18,000, condemnee appraised it at $95,000 and jury awarded condemnee $21,000, granting of new trial because award was inadequate was not such an abuse of trial judge's discretion as to warrant reversal in spite

of the fact there was no rebuttal of state's only expert witness. State Highway Commission v. Greenfield, 145 M 164, 399 P 2d 989.

Inadequacy of Award

Court abused discretion in granting new trial "upon the grounds of insufficiency of the evidence to justify the verdict in that the verdict awarded by the jury to the plaintiff is wholly inadequate" where there was conflict in evidence and where it was question for jury whether injuries suffered by passenger were caused by grossly negligent operation of car or whether passenger assumed risk of going into car driven by man who had several drinks. Heen v. Tiddy, 151 M 265, 442 P 2d 434.

Jury Misconduct

New trial was properly granted where foreman of jury made his own investigation at the scene of the accident after hearing testimony and informed the other members of jury, during their deliberation, of the results of his investigation. The foreman was guilty of misconduct upon which verdict could be impeached by affidavits of jurors. Goff v. Kinzle, 148 M 61, 417 P 2d 105, 107, distinguished in Rasmussen v. Sibert, 153 M 286, 456 P 2d 835.

Mistake or Inadvertence

Grant of new trial to permit plaintiff to give additional testimony on issue of damages only was not improper, notwithstanding that ground for relief was mistake or inadvertence and should have been given pursuant to Rule 60(b), where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. John J. Ming, Inc. v. District Court, 155 M 84, 466 P 2d 907.

New Evidence

Ex parte affidavit which alleged newly discovered evidence but was only cumulative in nature was insufficient in light of the record to authorize a new trial. Fisher v. Mitzel, 158 M 265, 491 P 2d 186.

DECISIONS UNDER FORMER LAW

Right To Appeal

Defendant was entitled to appeal, in spite of time limitation of section 93-5606 for filing bill of exceptions where motion for new trial was combined with motion to amend findings and request for review of facts, conclusions of law and judgment, since limitation under section 93-5606 did not apply prior to enactment of new rules of civil procedure. Crissey v. State Highway Commission, 147 M 374, 413 P 2d 308.

(b) TIME FOR MOTION. A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

References

Clark v. Worrall, 146 M 374, 406 P 2d 822.

Amendments

The amendment of May 21, 1969 made no change in this rule.

(c) TIME FOR SERVING AFFIDAVITS. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 made no change in this rule.

(d) TIME FOR HEARING ON MOTION. Hearing on the motion shall be had within 10 days after it has been served, or within 10 days after the party opposing the motion for new trial has served his affidavits as set forth in subparagraph (c) hereinabove except that at any time after

the notice of hearing on the motion has been served the court may issue an order continuing the hearing for not to exceed 30 days. In case the hearing is continued by the court, it shall be the duty of the court to hear the same at the earliest practicable date thereafter, and the court shall rule upon and decide the motion within 15 days after the same is submitted. If the court shall fail to rule upon the motion within said time, the motion shall, at the expiration of said period, be deemed denied.

The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.

If the motion is not noticed up for hearing and no hearing is held thereon, it shall be deemed denied as of the expiration of the period of time within which hearing is required to be held under this Rule 59.

History: En. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 enacted this subparagraph as Rule 59(d) and designated former Rules 59(d) and 59(e) as 59(e) and 59(f), respectively.

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Section 93-5606, R. C. M. 1947, is hereby superseded. There has been some confusion by reason of ambiguous language in section 93-5606, R. C. M. 1947, a hold-over statute from the practice which existed before the rules were adopted, and because of the necessity of researching for, and referring to, the case decisions under the statute spelling out the jurisdictional time limits and the effect thereof. It is felt that by incorporating our practice into this one rule, and eliminating the necessity of referring to statutes and case decisions, that it will be easier for the practitioner to comply.

DECISIONS UNDER FORMER LAW

Appellate Review

The appellate court may not disturb the findings of the trial court in ordering a new trial without a showing of abuse of discretion. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Disqualification of Judge

Section 93-901 does not permit disqualification of a judge pending motion for a new trial under this rule. State ex rel. Peery v. District Court, 145 M 287, 400 P 2d 648.

Judge's Discretion

The jury is delegated the task of finding the facts, but the trial judge has the discretion to prevent a miscarriage of justice by granting a new trial if there is an insufficiency of evidence to support the verdict. Campeau v. Lewis, 144 M 543, 398 P 2d 960, explained in Morris v. Corcoran Pulpwood Co., 154 M 468, 465 P 827.

Purpose of Rule

The purpose of this rule is to give a trial judge power to prevent what he considers a miscarriage of justice. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Scope

This rule permits the trial judge to order a new trial on his own initiative for the same reasons one could be ordered pursuant to section 93-5603 and is subject to the same interpretations as expressed in previous opinions on motions for new trials before adoption of the rule. Campeau v. Lewis, 144 M 543, 398 P 2d 960.

Time Limits

Combined motion for new trial and to alter, amend and supplement findings of fact, conclusions of law and judgment was not subject to time limits of former section 93-5606 requiring prompt hearing on new trial motion and superseded by this rule. State ex rel. Rozan v. District

Court, Sixteenth Judicial District, 147 M 532, 416 P 2d 19, 21. See also Crissey v. State Highway Commission, 147 M 374, 413 P 2d 308.

References

Waite v. Waite, 143 M 248, 389 P 2d 181; State ex rel. Wilson v. District Court, 143 M 543, 393 P 2d 39.

(e) ON INITIATIVE OF COURT. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendments of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(d) as Rule 59(e).

Amendments

The amendment of September 29, 1967 added the second sentence and made changes in phraseology.

The amendment of May 21, 1969 made no change in the wording of this rule.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 59(d), as amended 1966.

Explanation of change: The purpose of this amendment is to make it clear that a court, after notice and opportunity to be heard, may grant a new trial even though a motion for new trial has been made, for a ground not stated in the motion. Some cases have held otherwise.

(f) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be heard and determined within the time provided hereinabove with respect to a motion for a new trial.

History: En. Sec. 59, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Compiler's Notes

The amendment of Rule 59 by Supreme Court Order No. 10750-9 designated this former Rule 59(e) as Rule 59(f).

Amendments

The amendment of September 7, 1965 added a second paragraph which read: "Motions provided by this subdivision shall be heard and determined within the time provided by Section 93-5606 of the 1947 Revised Codes of Montana in the case of motions for a new trial."

The amendment of May 21, 1969 added "and may be combined with the motion for a new trial herein provided for" to the first sentence; substituted the second sentence for the former second paragraph added in 1965; and made changes in phraseology.

Additur

This rule did not give the district court power to order an additur to a condemnation award as a condition of denying motion for new trial. State Highway Commission v. Schmidt, 143 M 505, 391 P 2d 692.

Time Limit

A motion to alter, amend, and supplement findings of fact, conclusions of law and the judgment, combined with a motion for a new trial filed on September 28, 1965 was a motion contemplated by this rule and Rule 52(b) and was not governed by the time limits of section 93-5606. State ex rel. Rozan v. District Court of Sixteenth Judicial District, 147 M 532, 416 P 2d 19, 21.

Rule 60. Relief from judgment or order.

(b) MISTAKES—INADVERTENCE—EXCUSABLE NEGLECT—NEWLY DISCOVERED EVIDENCE—FRAUD, ETC. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or his legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.

History: En. Sec. 60, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750, Aug. 1, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of August 1, 1965 substituted "within 60 days when a defendant has been personally served, whether in lieu of publication or not, calculated from the date of service of notice of entry of the judgment or order or action taken in the proceeding" for "not more than one year after the judgment, order or proceeding was entered or taken" after "for reasons (1), (2), and (3)" in the second sentence; and inserted the third sentence.

The amendment of September 29, 1967 rewrote the second sentence; and substituted "required" for "provided" in the last sentence.

Commission Note to August 1, 1965 Amendment

The purpose of this amendment is to make the Montana practice correspond to practice under the last sentence of R. C. M. 1947, § 93-3905 (which was repealed with the adoption of the Rules of Civil Procedure), as construed in Smith v. Collis, 42 Mont. 350, 365-370 (1910). The time within which the motion may be made is shortened, but considered adequate.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

The federal rule measures the time for the motion for reasons (1), (2), and (3) from time the "judgment, order, or proceeding was entered or taken." The Montana rule measures the time from the "date of service of entry of the judgment or order or action taken"; but Rule 77(d), requiring notice of entry, is confined to judgments in actions in which an appearance has been made. This amendment, using the federal rule language adjusted to the requirements of Montana Rule

77(d), is for the purpose of avoiding ambiguity and litigation as to what, if any, time limit is imposed in cases of orders, and proceedings, and judgments where no appearance has been made.

Change of Counsel

Motion to have judgment vacated as to date and redated so as to permit moving party to file exceptions to findings or take other steps counsel deemed necessary for protection of client was improperly denied, and was abuse of discretion where moving party had inadequate time in which to obtain present counsel when conflict of interest arose with prior counsel. Schmidt v. Lloyd, 152 M 158, 447 P 2d 485.

Discretion of Court

Where record showed that defendant took no action for nearly three months after default judgment had been entered, defendant was not prejudiced by plaintiff's failure to give written notice of application for default judgment as required by M. R. Civ. P., Rule 55(b)(2), and district court did not abuse its discretion in denying defendant's motion to vacate the default judgment under M. R. Civ. P., Rule 55(c). Williams v. Superior Homes, Inc., 148 M 38, 417 P 2d 92, 94.

Slight abuse of discretion in refusing to set aside default judgment for "mistake, inadvertence, surprise, or excusable neglect" is sufficient to justify reversal, and when motion to vacate default judgment is supported by showing which leaves court in doubt or upon which reasonable minds might reach different conclusions, the doubt should be resolved in favor of the motion. Uffleman v. Labbit, 152 M 238, 448 P 2d 690.

Excusable Neglect

Defendant's contention that "personal problems drove all thought of lesser problems from his mind" was not sufficient to set aside a default judgment under subsection 1 of this section. Dudley v. Stiles, 142 M 566, 386 P 2d 342.

Grant of new trial pursuant to Rule 59(a) to permit plaintiff to give additional testimony on damages that had been omitted by excusable neglect was not improper, notwithstanding that such relief should have been given under this section, where no intervening rights had attached in reliance upon judgment and no actual injustice would ensue. John J. Ming, Inc. v. District Court, 155 M 84, 466 P 2d 907.

Where attorney for defendant had three other active files under same defendant's name and inadvertently filed complaint in one of the other files, with result that answer was not filed in time and plaintiff took judgment by default, a motion pursuant to clause (1) stating the facts and that there was a meritorious defense was adequate to set aside default judgment without verification and without affidavit of merit. Keller v. Hanson, 157 M 307, 485 P 2d 705.

Judgment Obtained by Fraud

Court of equity has inherent power, independent of statute, to vacate judgment obtained by fraud in violation of last sentence of Rule 60(b) even though party seeking relief was not necessary party in original action and motion to vacate was not made within liberal time limits prescribed by rule but was nevertheless timely considering that aggrieved party engaged attorney to file motion to vacate within thirty days after discovery of existence of judgment. Selway v. Burns, 150 M 1, 429 P 2d 640.

In quiet title action, district court properly denied motion to set aside default decree where moving party had no color of title; under this section default judgment will be set aside for excusable neglect only if movant is able to show good defense on merits. Diamond Investment Co. v. Geagan, 154 M 122, 460 P 2d 760.

Meritorious Defense

Answer and counterclaim need not be verified when submitted with motion under this rule which stated generally that there was a meritorious defense, and there is no longer a requirement for an affidavit of merit. Keller v. Hanson, 157 M 307, 485 P 2d 705.

Mistake of Law

Mistaken belief of party, against whom default judgment was taken, as to legal effect of contract with adverse party was mistake of law, rather than mistake of fact, and was not such a "mistake" as would support vacating the default. Uffleman v. Labbit, 152 M 238, 448 P 2d 690.

Probate Matters

Final decree of distribution and discharge in probate will not be set aside on ground of inadvertence or fraud either under statute or Rule 60(b) in absence of manifest abuse of court's discretion in case where moving party had every opportunity to protect his claim in probate and failed to do so. Werning v. McFarland, 149 M 137, 423 P 2d 851.

Scope of Rule

Contention that default judgment was erroneous on its face and should be set aside because the judgment and an exhibit attached to the complaint contained inaccurate and erroneous language was outside scope of rule and could not be raised thereunder. Uffleman v. Labbit, 152 M 238, 448 P 2d 690.

Voidable Judgment

This rule does not apply to voidable judgments. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

This rule has no application to prematurely entered default judgments since it applies to void and not voidable judgments. Sowerwine v. Sowerwine, 145 M 81, 399 P 2d 233.

Waiver of Right to Relief

Where proper notice of hearing on application for judgment of divorce was given defendant in accordance with M. R. Civ. P., Rule 55(b) and no relief different from that demanded in the complaint was granted in violation of Rule 54(c), an appeal on those grounds was dismissed by the supreme court on its own motion where no application to set aside the default or judgment was made under this rule. Sowerwine v. Sowerwine, 148 M 195, 418 P 2d 859, 861.

References

Kraus v. Treasure Belt Min. Co., 146 M 432, 408 P 2d 151; Wolfe v. Northern Pacific Ry. Co., 147 M 29, 409 P 2d 528.

(c) TIME FOR HEARING AND DETERMINING MOTIONS. Motions provided by subdivisions (a) and (b) of this rule shall be heard and determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment.

History: En. Sup. Ct. Ord. 10750, Sept. 7, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The amendment of May 21, 1969 substituted "Rule 59" for "section 93-5606 of the 1947 Revised Codes of Montana" and "trials" for "trial"; and added "and amendment of judgment."

Advisory Committee's Note to May 21, 1969 Amendment

Explanation of change: Since section 93-5606, R. C. M. 1947, is being superseded because of changes in Rules 46, 52 and 59, the change in Rule 60(c) is likewise required.

Rule 61. Harmless error.

Clerk's Error

Omission of clerk of court to require affidavit of amount due under Rule 55(b)(1) before entry of default judgment in favor of plaintiff is not fatal unless refusal to take action with respect to the omission appears to the court inconsistent with substantial justice. Interstate Counseling Service v. Emeline, 144 M 409, 396 P 2d 727, 728. (Dissenting opinion, 144 M 409, 396 P 2d 727, 729.)

Contributory Negligence

Submitting issue of contributory negligence to jury was harmless error in light of substantial evidence showing that defendant was not negligent and substantial evidence that even if defendant was negligent plaintiff was not injured in accident or injury was not result of defendant's negligence. Brown v. Reel, 148 M 381, 421 P 2d 454.

In a wrongful death action by father of eight and one-half year old boy, who, while riding a bicycle, was struck and killed by automobile, court's instruction that deceased boy was incapable of contributory negligence and court's refusal of defendant's offered instruction on contributory negligence was not reversible error, irrespective of question of boy's capacity, since there was no substantial credible evidence of contributory negligence in fact on part of deceased boy. Graham v. Rolandson, 150 M 270, 435 P 2d 263.

Joint Enterprise

Court's rulings with respect to issue of joint enterprise, if error, was harmless error, since driver was sole proximate cause of accident in which passenger suing owner of cattle was injured when car struck cattle on highway. Ratcliff v. Murphy, 150 M 31, 430 P 2d 627.

Poll of Jury

Lower court abused discretion in granting new trial based solely on ground that it had erred in refusing request for poll of jury since error, if any, was harmless in light of evidence affirmatively showing that verdict was rendered in open court in presence of all counsel, that in response to question by judge, foreman of jury advised him they had agreed upon verdict, and that following reading of verdict signed by foreman, judge inquired of jury

if it was true verdict of at least eight of them and jury answered in affirmative. Martello v. Darlow, 151 M 232, 441 P 2d 175.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon entry of judgment, is superseded by M. R. App. Civ. P., Rule 7.

(d) Superseded—M. R. App. Civ. P., Rule 7.

Supersession

This section (Sec. 62, Ch. 13, L. 1961), relating to stay of proceedings upon appeal, is superseded by M. R. App. Civ. P., Rule 7.

(e) STAY IN FAVOR OF THE STATE OF MONTANA OR AGENCY THEREOF.

Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected their appeal after writ of execution under section 93-9918 had issued, the appeal stayed the judgment although no bond was filed as required by section 93-8011, since under this rule no security was required from the state. Robertson v. State Highway Commission, 148 M 275, 420 P 2d 21, 24.

VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 68. **Offer of judgment.**

Rule 65. Injunctions.

References

Holtz v. Babcock, 143 M 341, 389 P 2d 869.

Rule 68. Offer of judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is

served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

History: En. Sec. 67, Ch. 13, L. 1961; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 added the last sentence.

Advisory Committee's Note to September 29, 1967 Amendment

Source: Fed. R. Civ. P. 68, as amended 1966.

This logical extension of the concept of offer of judgment is suggested by the common admiralty practice of determining liability before the amount of liability is determined.

Fraud on Court

Although proper procedure was followed under rule providing for offer of judgment, conduct of parties in perpetrating fraud on court required that judgment be vacated on motion of aggrieved beneficiary who was not party to suit against estate. Selway v. Burns, 150 M 1, 429 P 2d 640.

IX. APPEALS

Rule 72. Appeal from a district court to the supreme court.

Rule 72. Appeal from a district court to the supreme court.

When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Civil Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Civil Procedure.

History: En. Sec. 71, Ch. 13, L. 1961, amd. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Amendments

The 1965 amendment rewrote this section. For previous text, see parent volume.

Advisory Committee's Note

Subdivision (a) of Rule 41, M. R. App. Civ. P. merely adapts the Montana Rules of Civil Procedure to these Appellate Rules.

X. DISTRICT COURTS AND CLERKS

Rule 77. District courts and clerks.

Rule 77. District courts and clerks.

(b) TRIALS AND HEARINGS—ORDERS IN CHAMBERS.

Time for Hearing

Notwithstanding that hearing on defendant's motion for summary judgment was held one day prior to scheduled date, such procedure was permissible under this section since hearing was held with consent of both court and counsel. Israelson v. Mountain Tractor Co., 155 M 69, 467 P 2d 149.

(d) NOTICE OF ENTRY OF JUDGMENT SERVED.

Sufficiency of Notice

Notice sent to plaintiff's attorney that judgment had been entered in favor of defendant and stating that a copy of the order adjudging a dismissal with prejudice was attached, was sufficient for compliance with this rule even though a copy of the order was not actually attached. Jackson v. Tinker, — M —, 504 P 2d 692.

(e) TRANSMITTAL OF FILE ON REMOVAL. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.

History: En. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment substituted "the filing of a copy of the petition for removal" for "being served with a notice of the removal" at the beginning of the rule; inserted "and a request in writing therefor"; inserted "and subsequently filed" after "theretofore issued"; substituted "shall keep in the state court file" for "subsequently file"; and substituted "copy of the petition for removal" and "request for removal" near the end of the rule for "notice of removal."

Advisory Committee's Note

To define procedure and avoid unnecessary duplication of papers in state and federal court files. The proposed amendment correlates with Rule 10, Revised Rules of Procedure of the United States District Court for the District of Montana effective January 1, 1968.

XI. GENERAL PROVISIONS

Rule 86. Effective date—Statutes superseded.

Rule 81. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS.

Action To Remove Administrator

In statutory action for removal of administrator for misappropriation of funds of estate, administrator could be examined as adverse witness under Rule 43 notwithstanding provisions of Rule 81. In re Estate & Guardianship of Wyman, 149 M 525, 429 P 2d 629.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(b) APPEALS TO DISTRICT COURTS.

References

Stokes v. Delaney & Sons, Inc., 143 M 516, 391 P 2d 698.

(c) RULES INCORPORATED INTO STATUTES.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

Rule 83. Rules by district courts.

Briefs Required on Preliminary Motion

Trial court rule requiring filing of briefs in support of preliminary motion is proper exercise of authority under this rule and may be enforced by summary denial of motion where brief has not been filed. Hansen v. Kiernan, — M —, 499 P 2d 787.

Rule 86. Effective date—Statutes superseded.

(a) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These Rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these

rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than ninety (90) days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least thirty (30) days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to become effective at times other than January 1 will be published and transmitted at least thirty (30) days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment divided subdivision (a) into two paragraphs; inserted the second, third, fourth, fifth, and sixth sentences of the first paragraph and the first and second sentences of the second paragraph; substituted "These rules and amendments" for "They" at the beginning of the third sentence of the second paragraph; inserted "or amendments" after "particular action pending when the rules" in the latter part of the third sentence of the second paragraph; and substituted "became effective" for "will take effect" in the first sentence of the first paragraph.

Relation Back of Complaint

Question of relation back of complaint amended after adoption of Rules is governed by provisions of Rules even though action originated prior to effective date of Rules in absence of finding by court having jurisdiction that Rules should not control. Rozan v. Rosen, 150 M 121, 431 P 2d 870.

Retroactive Application

District court had the power to consider motion under procedure that was in effect when the motion was filed where the court believed application of amended rule would work an injury. State ex rel. Rozan v. District Court of Sixteenth Judicial District, 147 M 532, 416 P 2d 19, 21.

Rule 4B(1), M. R. Civ. P., applied to act of alleged malpractice occurring in Montana prior to effective date of the Montana Rules of Civil Procedure and doctor who had not resided in Montana since the effective date of the rules could properly be served with process, under Rule 4D(3), in California. State ex rel. Johnson v. District Court of Fourth Judicial District, 148 M 22, 417 P 2d 109, 110.

The giving effect to the service of summons provisions of Montana Rules of Civil Procedure, Rule 4, subd. B, when the operative facts of the case to which the rule applied had taken place prior to the effective date provided in this section, was not a prohibited retroactive application of Rule 4, subd. B, within the meaning of section 12-201. Weber v. Hydroponics, Inc., 226 F Supp 117, 118.

References

Steffes v. Crawford, 143 M 43, 386 P 2d 842.

(b) STATUTES SUPERSEDED. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.

History: En. Sec. 79, Ch. 13, L. 1961; amd. Ord. Sup. Ct. June 1, 1964, eff. July 1, 1964.

Amendment

The 1964 amendment inserted "or amendments thereto" after "these rules"; and made another minor change in phraseology.

Table A. Special statutory proceedings under Rule 81.

Compiler's Notes

A number of sections referred to in this table have been repealed.

Sections 23-926 to 23-928 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see sec. 23-3316.

Sections 23-2301 to 23-2304 were repealed by Sec. 248, Ch. 368, Laws of 1969; for similar provisions, see secs. 23-4101, 23-4104 to 23-4109.

Section 38-606 was repealed by Sec. 1, Ch. 310, Laws of 1969; for present law, see sec. 69-6401 et seq.

Sections 38-701 to 38-711 were repealed by Sec. 15, Ch. 112, Laws of 1963, Sec. 82, Ch. 266, Laws of 1963, and Sec. 10, Ch. 213, Laws of 1963; for present law, see sec. 80-2404.

Sections 38-801 to 38-819 were repealed by Sec. 82, Ch. 266, Laws of 1963, Sec. 10, Ch. 213, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2303 to 80-2312.

Sections 38-1101 to 38-1112 were repealed by Sec. 1, Ch. 230, Laws of 1959, and Sec. 101, Ch. 199, Laws of 1965; for present law, see secs. 80-2501 to 80-2503.

Section 40-3633 was repealed by Sec. 37, Ch. 362, Laws of 1969; for present law, see sec. 40-3664.

Section 66-1004 was repealed by Sec. 43, Ch. 338, Laws of 1969; for present law, see sec. 66-1040.

Sections 69-307 to 69-310 and 69-313 were repealed by Sec. 28, Ch. 264, Laws of 1955, and Sec. 223, Ch. 197, Laws of 1967; for present provisions, see secs. 69-4301 to 69-4317.

Section 69-522 was repealed by Sec. 223, Ch. 197, Laws of 1967; for present law, see sec. 69-4418.

Section 69-1335 was repealed by Sec. 223, Ch. 197, Laws of 1967; for similar provisions, see secs. 69-4816 and 69-4907.

Section 75-1634 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-8205.

Section 75-2901 was repealed by Sec. 496, Ch. 5, Laws of 1971; for present law, see sec. 75-6303.

Sections 75-3001 and 75-3002 were repealed by Sec. 16, Ch. 262, Laws of 1971.

Sections 80-810 and 80-815 to 80-817 were repealed by Sec. 82, Ch. 206, Laws of 1963, Sec. 242, Ch. 147, Laws of 1963, and Sec. 101, Ch. 199, Laws of 1965; for similar provisions, see sec. 80-2202 et seq.

Sections 80-1002 and 80-1003 were repealed by Sec. 101, Ch. 199, Laws of 1965.

Section 84-5617 was repealed by Sec. 32, Ch. 140, Laws of 1969; for a similar provision, see sec. 84-5606.25.

Section 94-101-1 to 94-101-33 were repealed by Sec. 2, Ch. 196, Laws of 1967; for new law, see secs. 95-2701 to 95-2713, 95-2715, and 95-2716.

Sections 94-901-1 to 94-901-18 were repealed by Sec. 3, Ch. 208, Laws of 1961; for new provisions, see secs. 93-2601-41 to 93-2601-82.

Table B. List of Rules Superseding Statutes.

Rule	Statutes Superseded (R. C. M. 1947, sections)
4D	16-809, 93-3008, 93-3011, 93-3012
41(e)	93-3002
52(a)	93-5302, 93-5303, 93-5411
52(b)	93-5305, 93-5306, 93-5307

59(a), (b), (c), (d) 93-5605, 93-5606

History: En. Sec. 82, Ch. 13, L. 1961; amd. Sec. 3, Ch. 14, L. 1963; amd. Sec. 2, Ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The 1965 amendment added sections 16-809, 93-3008, 93-3011, and 93-3012 to the list of sections superseded by Rule 4 D; and added section 93-3002 to the list of sections superseded by Rule 41(e).

The 1969 amendment added section 93-5302 to the list of sections superseded by Rule 52(a); inserted sections 93-5305, 93-5306, and 93-5307 as being superseded by Rule 52(b); added section 93-5606 to the list of sections superseded by Rule 59(d).

Table C. List of Statutes Superseded by Rules.

Statutes Superseded (R. C. M. 1947, sections)	Rules
93-3002	41(e)
93-3008	4D
93-3011	4D
93-3012	4D
93-5302	52(a)
93-5305	52(b)
93-5306	52(b)
93-5307	52(b)
93-5606	59(d)
16-809	4D

History: En. Sec. 83, Ch. 13, L. 1961; amd. Sec. 4, Ch. 14, L. 1963; amd. Sec. 3, ch. 190, L. 1963; amd. Sup. Ct. Ord. 10750, Apr. 1, 1965, eff. July 1, 1965; amd. Sup. Ct. Ord. 10750-9, May 21, 1969, eff. July 1, 1969.

Amendments

The 1965 amendment added sections 16-809, 93-3002, 93-3008, 93-3011, and 93-3012 to the table.

The 1969 amendment added sections 93-5302, 93-5305 to 93-5307 and 93-5606 to the table.

CHAPTER 2901—SUPPORT OF CHILDREN BORN OUT OF WEDLOCK

93-2901-1. Obligations of the father.

NOTE.—Uniform State Law. Sections 93-2901-1 to 93-2901-11 constitute the "Uniform Act on Paternity" approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1960 and adopted in substance in Kentucky and Mississippi.

CHAPTER 3001

MONTANA RULES OF APPELLATE CIVIL PROCEDURE

I. APPLICABILITY OF RULES

Rule

1. Scope of rules—From what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

4. How taken.
   - (a) FILING THE NOTICE OF APPEAL.
   - (b) JOINT APPEALS.
   - (c) CONTENT OF THE NOTICE OF APPEAL.
   - (d) SERVICE OF NOTICE OF APPEAL.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
   - (a) [FORM OF UNDERTAKING—TIME FOR FILING.]
7. Stay of judgment or order pending appeal.
   - (a) [STAY UPON ENTRY OF JUDGMENT—UNDERTAKING.]
   - (b) [SALE OF PERISHABLE PROPERTY.]
   - (c) [CASES IN WHICH STAY OF PROCEEDINGS NOT ALLOWED.]
8. Sureties and their justification.
   - (a) [LIABILITY OF SURETY—ENFORCEMENT.]
   - (b) [JUSTIFICATION OF SURETIES.]
9. The record on appeal.
   - (a) COMPOSITION OF THE RECORD ON APPEAL.
   - (b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING.
   - (c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE.
   - (d) AGREED STATEMENT AS THE RECORD ON APPEAL.
   - (e) CORRECTION OR MODIFICATION OF THE RECORD.
   - (f) [FINDINGS OF FACT AND CONCLUSIONS OF LAW.]
10. Transmission of the record.
   - (a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT.

Rule
(b) DUTY OF CLERK TO TRANSMIT THE RECORD.
(c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME.
(d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT.
(e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT.
(f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT.

11. Docketing the appeal—Filing of the record.
(a) DOCKETING THE APPEAL.
(b) FILING OF THE RECORD.
(c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL.

12. Effect of dismissal.

13. Acts of executors, administrators or guardians valid when appointment vacated.

14. Ruling against respondent may be reviewed.

15. Remedial powers of the supreme court.

16. Remittitur must be certified to the clerk of the district court.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

17. Acceptance and manner of conducting.
(a) WHEN ACCEPTED.
(b) HOW COMMENCED AND CONDUCTED.
(c) APPLICATIONS—WHEN FILED.
(d) APPLICATIONS—WHAT TO CONTAIN.
(e) APPLICATIONS—HOW AND WHEN PRESENTED.
(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE.
(g) BRIEFS.
(h) HEARING—WHEN HAD.

IV. APPEALS IN FORMA PAUPERIS

18. Applications and manner of proceeding.
(a) APPLICATION TO DISTRICT COURT.
(b) APPLICATION TO THE SUPREME COURT.
(c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS.

V. GENERAL PROVISIONS

19. Record of commissions and oaths.
(a) COMMISSIONS AND OATHS.
(b) MINUTES OF COURT.

Rule
20. Filing and service.
(a) FILING.
(b) SERVICE OF ALL PAPERS REQUIRED.
(c) MANNER OF SERVICE.
(d) PROOF OF SERVICE.

21. Computation and extension of time.
(a) COMPUTATION OF TIME.
(b) EXTENSION OF TIME.
(c) ADDITIONAL TIME AFTER SERVICE BY MAIL.

22. Motions.

23. Briefs.
(a) BRIEF OF THE APPELLANT.
(b) BRIEF OF THE RESPONDENT.
(c) REPLY BRIEF.
(d) REFERENCES IN BRIEFS TO PARTIES.
(e) REFERENCES IN BRIEFS TO THE RECORD.
(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC.
(g) LENGTH OF BRIEFS AND COSTS.
(h) BRIEFS IN CASES INVOLVING CROSS APPEALS.

24. Brief of an amicus curiae.

25. The appendix to the briefs.
(a) USE OF AN APPENDIX.
(b) CONTENTS OF THE APPENDIX.
(c) ARRANGEMENT OF THE APPENDIX.
(d) REPRODUCTION OF EXHIBITS.

26. Filing and service of briefs.
(a) TIME FOR FILING BRIEFS.
(b) NUMBER OF COPIES TO BE FILED AND SERVED.
(c) CONSEQUENCES OF FAILURE TO FILE BRIEFS.

27. Form of briefs, the appendix, motions and other papers.
(a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS.
(b) TYPEWRITTEN PAPERS AND MOTIONS.
(c) FIRST PAGE AND COVER.

28. Prehearing conference.

29. Oral argument.
(a) NOTICE OF HEARING—POSTPONEMENT.
(b) TIME ALLOWED FOR ARGUMENT.
(c) ORDER AND CONTENT OF ARGUMENT.
(d) CROSS AND SEPARATE APPEALS.

Rule
(e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS.
(f) SUBMISSION ON BRIEFS.
(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL.

30. Entry and notice of orders and judgments.
(a) ENTRY AND NOTICE.

31. Interest on judgments.

32. Damages for appeal without merit.

33. Costs.
(a) COSTS ON APPEAL.
(b) COSTS OF BRIEFS AND APPENDICES.
(c) OTHER COSTS TAXABLE.
(d) COSTS IN ORIGINAL PROCEEDINGS.
(e) UNNECESSARY COSTS.
(f) NOTATION BY CLERK.

34. Petitions for rehearing.

35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
(a) NOTICE AND COPY OF DECISION TO BE FURNISHED.
(b) REMITTITUR—WHEN ISSUED—WHEN COPY OF OPINION TO ACCOMPANY.
(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON.

36. Voluntary dismissal.

37. Substitution of parties.
(a) DEATH OF A PARTY.
(b) SUBSTITUTION FOR OTHER CAUSES.
(c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.

38. Cases involving constitutional questions where the state is not a party.

39. Calendar—Withdrawal of records.
(a) PLACING CAUSES UPON CALENDAR.
(b) SETTING CAUSES FOR ARGUMENT.
(c) ADVANCEMENT OF CAUSES.
(d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE.

40. Appeals from injunction orders.

41. Statutes and rules amended.

Rule
42. Applicability in general.
(a) SPECIAL STATUTORY PROCEEDINGS.
(b) APPEALS TO DISTRICT COURTS.
(c) RULES INCORPORATED INTO STATUTES.

43. Title—Effective date—Statutes superseded.
(a) TITLE.
(b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS.
(c) STATUTES AND RULES SUPERSEDED.

Appendix of forms.

Table A. List of statutes and rules superseded or amended.

B. List of rules of appellate civil procedure superseding, in whole or in part, or amending, statutes and rules.

C. List of statutes and rules superseded, in whole or in part, or amended, by designated rules of appellate civil procedure.

I. APPLICABILITY OF RULES

Rule 1. Scope of rules—From what judgment or order an appeal may be taken.
2. What the court may review on an appeal from a judgment.
3. Suspension of the rules.

Rule 1. Scope of rules—From what judgment or order an appeal may be taken.

These rules govern procedure in appeals in civil cases to the supreme court of Montana from Montana district courts and original proceedings in the supreme court of Montana. The party applying for original relief is known as the petitioner and the adverse party as the defendant. The party appealing is known as the appellant, and the adverse party as the respondent.

A party aggrieved may appeal from a judgment or order, except when expressly made final by law, in the following cases:

(a) From a final judgment entered in an action or special proceeding commenced in a district court, or brought into a district court from another court or administrative body.

(b) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order changing or refusing to change the place of trial when the county designated in the complaint is not the proper county; from an order appointing or refusing to appoint a receiver, or giving directions with respect to a receivership, or refusing to vacate an order appointing or affecting a receiver; from an order

directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders, in actions for partition as determine the rights and interests of the respective parties and direct partition to be made. In any of the cases mentioned in this subdivision the supreme court, or a justice thereof, may stay all proceedings under the order appealed from, on such conditions as may seem proper.

(c) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance for a widow or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor, or administrator, or guardian; or refusing, allowing, directing the distribution or partition of any estate, or any part thereof, or the payment of a debt, claim, legacy, or distributive share; or confirming or refusing to confirm a report of an appraiser setting apart a homestead.

All questions raised on an order overruling a motion for a new trial or on an order changing or refusing to change the place of trial under R. C. M. 1947, section 93-2906 subdivisions 2, 3 or 4 thereof may be raised and reviewed on an appeal from the judgment.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in clause (b), inserted "or refusing to permit an action to be maintained as a class action;" near the beginning of the first sentence.

Advisory Committee's Note

Section 93-8003, R. C. M. 1947, is restated and clarified. The effect of section 93-8004 (3), referring to "an order changing or refusing to change a place of trial," is limited by providing for appeals from orders re change of venue only in cases where the motion for change is based upon subdivision 1 of section 93-2906.

Since these rules only apply to appeals from district courts to the Montana supreme court, the provisions of sections 93-8001 and 93-8002 are not superseded in so far as they refer to appeals in actions in police or justice's courts: a judgment or order in a civil action in police or justice's courts, except when expressly made final, may be reviewed as prescribed in R. C. M. 1947, sections 93-7901 to 93-7908.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This adds to appealable orders an order under Rule 23(c)(1), Montana Rules of Civil Procedure, refusing to permit a class action to be maintained as such. It does not permit appeal from an order permitting a class action to be maintained as such. See Advisory Committee's Note to Rule 23 of the Montana Rules of Civil Procedure.

Class Action

Writ of supervisory control granting relief from district court order permitting maintenance of class action was not justified since the order was subject to alteration or amendment as the matter progresses and since the question can be considered on appeal from final judgment. State ex rel. Anaconda Aluminum Co. v. District Court, 158 M 228, 490 P 2d 351.

Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

Denial of Motion

Where district court exceeded its jurisdiction in denying motion to quash summons and dismiss action where the summons had not been served and returned within the three years required by

M. R. Civ. P., Rule 41(e) the order was not appealable under this rule. State ex rel. Belwin, Inc. v. Davison, 148 M 345, 420 P 2d 842, 844.

Writ of supervisory control was proper where lessor's motion to dismiss sublessees' action for breach of lease agreement, to which sublessees were not parties, was denied by the district court, the order denying the motion to dismiss not being appealable under this rule. State ex rel. Buttrey Foods, Inc. v. District Court, 148 M 350, 420 P 2d 845, 847.

Denial of Writ of Assistance

Although denial of writ of assistance, placing purchaser at sheriff's sale under mortgage foreclosure into possession of lands involved, by district court was appealable under rule either as "an order directing * * * surrender of property" or as "any special order made after final judgment," writ of supervisory control to compel the district court to issue writ of assistance was available as remedy since remedy by appeal was neither speedy nor adequate. State ex rel. Foss v. District Court, Fourth Judicial District, 152 M 73, 446 P 2d 707.

Dismissal of Action

The effect of a district court's order dismissing the action was substantially the same as a judgment for defendants and therefore appealable even though no formal judgment was entered. Prentice Lumber Co. v. Hukill, — M —, 504 P 2d 277, distinguishing Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100, and Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1.

Order Denying Summary Judgment

Although order denying summary judgment is nonappealable at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect judgment are reviewable on subsequent appeal from final judgment. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

Standing As Aggrieved Party

Appellant, who first raised issue of the zoning classification of property involved in condemnation proceeding, lacked standing as "a party aggrieved" to complain of the state's subsequent emphasis on the zoning of the property as misleading jury into reaching erroneous verdict. State Highway Commission v. Vaughn, 155 M 277, 470 P 2d 967.

Writ of Supervisory Control

Although orders of district court striking two defenses from relator's answer and granting plaintiff summary judgment on issue of liability were not directly appealable under this section, writ of supervisory control was available as remedy. State ex rel. Great Falls Nat. Bank v. District Court, 154 M 336, 463 P 2d 326.

DECISIONS UNDER FORMER LAW

Dismissal of Action

An order granting a motion to dismiss was not appealable under former section 93-8003. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100; Rambur v. Diehl Lumber Co., 143 M 432, 391 P 2d 1; both distinguished in — M —, 504 P 2d 277, 279.

Injunctions and Restraining Orders

Order denying county commissioner's motion to quash temporary injunction against use of real property valuations made by private appraisal group and relied on by reclassification officer appointed by commissioners to determine 1965 tax assessment rolls was appealable under former section 93-8003. State ex rel. Keast v. Krieg, 145 M 521, 402 P 2d 405, 19 ALR 3d 396.

Sustaining of Demurrer

Notwithstanding that former statute providing for appeals gave party against whom demurrer was sustained plain and speedy remedy by appeal, court would not dismiss application for supervisory writ where judgment sustaining demurrer also stayed proceedings and expressly accorded losing party right to apply for supervisory writ. State ex rel. Cave Constr. Co. v. District Court, Third Judicial District, 150 M 18, 430 P 2d 624.

Rule 2. What the court may review on an appeal from a judgment.

Upon appeal from a judgment, the court may review the verdict or decision, and any intermediate order or decision excepted or objected to within the meaning of Rule 46 of the Montana Rules of Civil Procedure, which involves the merits, or necessarily affects the judgment, except a decision or order from which an appeal might have been taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8022.

Correction of Erroneous Judgment

Case would be remanded to district court for purpose of amending, by incorporating appropriate terms, a judgment which omitted defaulting codefendant who was jointly and severally liable on obligation. White v. Nollmeyer, 151 M 387, 443 P 2d 873.

Denial of Change of Venue

Specification of error arising from trial court's order denying motion for change of venue was not properly before supreme court because timely appeal was not made from order as required by rules. Sealey v. Majerus, 149 M 268, 425 P 2d 70.

Objections First Raised on Appeal

In condemnation proceedings by the state highway commission to condemn a right of way for an interstate highway which divided ranch into two large tracts making an underpass necessary, alleged error of trial court in its preliminary order of condemnation of ordering commission at its own expense to install, construct and maintain the underpass on the ground that the commission had previously agreed to install the underpass, could not be raised for the first time on appeal where the question was not raised at the time of the trial in the lower court. State ex rel. State Highway Commission v. Wheeler, 148 M 246, 419 P 2d 492, 496.

Order Denying Summary Judgment

Although order denying summary judgment is nonappealable order at time it is made because of its interlocutory character, it is nonetheless reviewable under appellate rule providing that all nonappealable intermediate orders or decisions properly excepted or objected to which involve merits or necessarily affect the judgment are reviewable on subsequent appeal from final judgment. Brown v. Midland Nat. Bank, 150 M 422, 435 P 2d 878.

Rule 3. Suspension of the rules.

In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may, except as otherwise provided in Rule 21(b), suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 2 of the Federal Draft. Its purpose is explained by the Federal Advisory Committee's Note. Adjusted to state practice, this purpose is to make clear the power of the supreme court to expedite the determination of cases of pressing concern to the public or to the litigants by prescribing a time schedule other than that provided by the rules. The rule also contains a general authorization to the supreme court to relieve litigants of the consequences of default where manifest injustice would otherwise result. Rule 21(b) prohibits the supreme court from extending the time for taking appeal.

II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

Rule 4. How taken.
5. Time for filing notice of appeal.
6. Undertaking for costs on appeal.
7. Stay of judgment or order pending appeal.
8. Sureties and their justification.
9. The record on appeal.
10. Transmission of the record.
11. Docketing the appeal—Filing of the record.
12. Effect of dismissal.
13. Acts of executors, administrators or guardians valid when appointment vacated.
14. Ruling against respondent may be reviewed.
15. Remedial powers of the supreme court.
16. Remittitur must be certified to the clerk of the district court.

Rule 4. How taken.

(a) FILING THE NOTICE OF APPEAL. An appeal shall be taken by filing a notice of appeal in the district court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

(b) JOINT APPEALS. If two or more persons are entitled to appeal from a judgment or order of the district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate notices of appeal as a single appellant.

(c) CONTENT OF THE NOTICE OF APPEAL. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from. Form 1 in the Appendix of Forms is a suggested form of notice of appeal.

(d) SERVICE OF NOTICE OF APPEAL. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 3 of the Federal Draft, but excludes references to criminal cases, habeas corpus proceedings and bankruptcy. Nothing other than the filing of a notice of appeal in the district court is required for the perfecting of an appeal. In the interest of providing the supreme court with prompt notice that its jurisdiction has been invoked, the rule directs the clerk of the district court to forward a copy of the notice of appeal to the clerk of the supreme court. The requirement that the appellant furnish the clerk with the necessary number of copies of the notice of appeal and that the clerk endorse on each copy served the date on which the notice was filed are for the convenience of the clerk and litigants respectively.

DECISIONS UNDER FORMER LAW

Service on Respondent

Where notice of appeal was not served on the respondent party within six months of the date of judgment, the supreme court could not acquire jurisdiction even though notice was filed with the district court within the statutory period. Seiffert v. Police Commission of Helena, 144 M 52, 394 P 2d 172.

Rule 5. Time for filing notice of appeal.

The time within which an appeal from a judgment or an order must be taken shall be 30 days from the entry thereof, except that in cases where service of notice of entry of judgment is required by Rule 77(d)

of the Montana Rules of Civil Procedure the time shall be 30 days from the service of notice of entry of judgment, but if the state of Montana, or any political subdivision thereof, or an officer or agency thereof is a party the notice of appeal shall be filed within 60 days from the entry of the judgment or order or 60 days from the service of notice of the entry of judgment. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 7 days of the date on which the first notice of appeal was filed, or within the time otherwise provided by this rule, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the district court by any party pursuant to the Montana Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this rule commences to run and is to be computed from mailing by the clerk of notice of the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

Upon showing of excusable neglect, the district court may extend the time for filing the notice of appeal by any party for a period not to exceed 30 days from the expiration of the original time prescribed by this rule.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967, in the first sentence of the first paragraph, inserted "a judgment or" before "an order"; substituted "except that * * * the time" for "and the time within which an appeal from a judgment must be taken"; deleted "as provided in Rule 77(d) of the Montana Rules of Civil Procedure" after "entry of judgment"; and inserted "or any political subdivision thereof" after "state of Montana."

Advisory Committee's Note

This rule is patterned after Rule 4 of the Federal Draft. (Provisions for appeals in bankruptcy, petitions for impeachment, under the Railway Labor Act, under the Interlocutory Appeals Act, and in criminal cases, are omitted.) It materially shortens the time for taking an appeal.

The Federal Draft provides that the notice of appeal shall be filed within 30 days "of the date of the entry of the judgment order appealed from." The change, which measures the time from service of notice of entry of the judgment, is for the purpose of avoiding uncertainty as to what is a judgment and reducing the possibility of lack of knowledge of the entry of the judgment or order.

The provision for added time for appeal by other parties after notice of appeal is filed by one party is new. The Federal Advisory Committee Note explains this as follows: "It not infrequently happens that a party considers himself aggrieved by the final judgment but is willing to abide by it if it is to be the final result of the action. Such a party should be protected against the possibility that another party may file a final hour appeal and thereby oblige the forbearing party to undergo the expense of an appeal without the opportunity of presenting his own grievance" to the supreme court.

The time limit for taking an appeal would not prevent the taking of an appeal at any time after the entry of the judgment or order and before service of notice of entry.

The final paragraph permits an extension of the time for taking an appeal by the district court "upon a showing of excusable neglect." In view of the ease with which an appeal may be taken—the filing

of a simple notice with the clerk of court—and the unlikelihood that there will not be actual notice of the entry of the judgment or order, it would be an extraordinary case which would justify an extension. But the district court should have the authority to extend time in extraordinary cases where injustice would otherwise result. The phrase "by any party" makes it clear that the district court may extend the time allowed for filing a cross or separate appeal after an initial appeal has been filed.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

Since Rule 77(d), M. R. Civ. P., only requires service of notice of entry of judgment in cases where an appearance has been made, no time appears to be provided for filing notice of appeal from judgments in default cases. This amendment is designed to supply the deficiency.

The addition of the phrase, "or any political subdivision thereof," is added to make it clear that the 60-day provision applies to cities, counties, etc.

Rule 6. Undertaking for costs on appeal.

(a) [Form of undertaking—Time for filing]. Within 10 days after service of notice of appeal an undertaking for costs on appeal shall be filed in the district court, or a deposit of the money in the amount thereof be made with the clerk of the district court to abide the event of the appeal, or the undertaking be waived by the adverse party in writing. The undertaking must be executed on the part of the appellant by at least 2 sureties, or by a corporate surety as may be authorized by law, to the effect that the appellant will pay all damages and costs which may be awarded against him on the appeal, or on the dismissal thereof, not exceeding five hundred dollars. If the undertaking on appeal is not filed within the time specified, or if the undertaking filed is found insufficient, and if the action is not yet docketed with the supreme court, an undertaking may be filed at such time before the action is so docketed as may be fixed by the district court. After the action is so docketed, application for leave to file an undertaking may be made only in the supreme court. The undertaking for costs herein provided may be combined in a single document with a supersedeas bond under Rule 7.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rules 7 and 8 of the Federal Draft contain provisions for appeal bonds and the stay of judgments and orders. These provisions are not followed in the rule. Rather Rules 6, 7 and 8 hereof are substituted. These provisions are believed to be more in accord with state practice and to better fit into Montana statutes than do the provisions of the Federal Draft. This rule supersedes R. C. M. 1947, sections 93-8005, 93-8006, 93-8012, 93-8015, and compares with Federal Rule 73(c) and (e).

The amount of the undertaking has remained at $300 since 1895, and the rule would increase it to $500. Also, express provision is made for corporate sureties as may be authorized by law. Such authorization is found in R. C. M. 1947, section 93-8711.

Rule 7. Stay of judgment or order pending appeal.

(a) [Stay upon entry of judgment—Undertaking]. Upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of the execution of the judgment or order. The court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing his property. Upon service of notice of appeal, if the court has made no such order or the appellant desires a stay for a longer period than ordered, he may present

to the district court and secure its approval of a supersedeas bond which shall have such surety or sureties as are required for an undertaking for costs on appeal prescribed by Rule 6(a). The bond shall be conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment or order is affirmed, and to satisfy in full such modification of the judgment or order and such costs, interest, and damages as the supreme court may adjudge and award. When the judgment or order is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment or order remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the district court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment or order determines the disposition of property in controversy as in real actions, replevin, and actions to foreclose mortgages, or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest, and damages for delay. On application, the supreme court in the interest of justice may suspend, modify, restore, or grant any order made under this subdivision.

(b) [Sale of perishable property]. If the judgment or order appealed from directs the sale of perishable property, the district court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the supreme court.

(c) [Cases in which stay of proceedings not allowed]. No stay of proceedings shall be allowed upon a judgment or order which adjudges the defendant guilty of usurping, or intruding into, or unlawfully holding public office, civil or military, within this state; or which grants a writ of mandamus, or of prohibition, against a tribunal, corporation, public officer, or board, commanding certain acts to be done which ought to be done by such tribunal, corporation, public officer, or board, and not involving the payment or allowance of money or its equivalent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule supersedes subdivisions (a) and (d) of Rule 62 of the Montana Rules of Civil Procedure. It also supersedes section 93-8013 in so far as applicable to appeals from district courts to the supreme court. However, since these rules do not apply to appeals from police and justices' courts, section 93-8013 is not superseded in so far as it provides that in cases where an undertaking is required on appeal by the provisions of sections 93-7901 to 93-7908, "a deposit in the court below of the amount of the judgment appealed from, and three hundred dollars in addition, shall be equivalent to filing the undertaking; and . . . the undertaking or deposit may be waived by the written consent of the respondent." Also section 93-8014 is superseded, and subdivision (c) of this rule is patterned after the last part of that section.

The provision of this rule that, upon entry of a judgment or order a party may apply to the district court on notice or ex parte for a stay of execution, is designed to afford time to obtain a supersedeas bond during which the status quo is maintained by court order. The power of the supreme court recognized by the last sentence of subdivision (a) supplements the power of the district court.

Constitutional Power

Supreme court's constitutional power under 1889 Const., art. VIII, § 3, to issue writs necessary to the complete exercise

of its appellate jurisdiction overrode the provision in subdivision (c) of this rule prohibiting stay of a writ of mandamus, and supreme court could stay a district court writ of mandamus ordering the superintendent of banks to issue a bank charter since a stay was necessary to make the right of appeal effectual. State ex rel. Bennett v. Dowdall, 157 M 11, 482 P 2d 572.

Supersedeas Bond

Failure of defendant to file supersedeas bond pursuant to this section resulted in dismissal of appeals since such bond is only method to stay execution of judgment and after judgment is paid, it passes beyond review. Gallatin Trust & Savings Bank v. Henke, 154 M 170, 461 P 2d 448.

An application for reduction in the amount of a supersedeas bond should be submitted to the district court that set the amount. State ex rel. Adams v. District Court of Ninth Judicial District in and for County of Teton, 155 M 309, 471 P 2d 537.

DECISIONS UNDER FORMER LAW

Eminent Domain Proceeding

Where state highway commission filed notice of appeal and perfected its appeal after writ of execution under section 93-9918 had issued, the appeal stayed the judgment although no bond was filed as required by this section, since under Rule 62(e), no security was required from the state. Robertson v. State Highway Commission, 148 M 275, 420 P 2d 21, 24.

Rule 8. Sureties and their justification.

(a) [Liability of surety—Enforcement]. In cases where an undertaking on appeal or supersedeas bond with sureties is required, the provisions of R. C. M. 1947, sections 93-8710 to 93-8715, inclusive, apply. By entering into an undertaking on appeal or supersedeas bond given pursuant to Rules 6 and 7, the surety submits himself to the juridiction of the district court and irrevocably appoints the clerk of the district court as his agent upon whom papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of any independent action. The motion and such notice of the motion as the district court prescribed may be served on the clerk of that court, who shall forthwith mail copies to each surety whose address is known.

(b) [Justification of sureties]. A party may except to the sufficiency of the sureties to any bond or undertaking mentioned in this rule at any time within 30 days after the filing of such bond or undertaking; and unless they or other sureties, within 20 days after service of notice of such exception, justify before a judge of the district court, or the clerk thereof, upon 5 days' notice to the other parties of the time and place of justification, execution of the judgment or order appealed from is no longer stayed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The provisions of subdivision (a) of the rule with respect to proceedings against sureties is patterned after Rule 8(b) of the Federal Draft. Subdivision (b) of the rule follows the existing Montana practice provided by R. C. M. 1947, section 93-8013, but the language is changed to avoid confusion where there are cross appeals or mixed forms of relief and to make it clear that either appellant or respondent, or both, may except to the sufficiency of sureties on a bond or undertaking furnished by the other.

Rule 9. The record on appeal.

(a) COMPOSITION OF THE RECORD ON APPEAL. The original papers and exhibits filed in the district court, the transcript of pro-

ceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

(b) THE TRANSCRIPT OF PROCEEDINGS—DUTY OF APPELLANT TO ORDER—NOTICE TO RESPONDENT IF PARTIAL TRANSCRIPT IS ORDERED—COSTS OF PRODUCING. Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

(c) STATEMENT OF THE EVIDENCE OR PROCEEDINGS WHEN NO REPORT WAS MADE OR WHEN THE TRANSCRIPT IS UNAVAILABLE. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such record after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

(d) AGREED STATEMENT AS THE RECORD ON APPEAL. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 10. Copies of the agreed statement may be filed as the appendix required by Rule 25.

(e) CORRECTION OR MODIFICATION OF THE RECORD. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

(f) [FINDINGS OF FACT AND CONCLUSIONS OF LAW.] In all nonjury cases where judgment is rendered on the basis of findings of fact and conclusions of law such findings and conclusions by the district court should be incorporated in the appendix to appellant's brief, along with the district court's opinion, if any.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added subdivision (f).

Advisory Committee's Note

This rule is patterned after Rule 10 of the Federal Draft.

Subdivision (a). This subdivision provides for the use of the original trial record as the official record on appeal, and judgment rolls are nowhere provided for in these Rules. This use of the trial record is now provided for in all federal circuit courts.

Subdivision (b). The Federal Advisory Committee's Note states: "The appellant is required to serve a statement of the issues which he intends to present on appeal if only a part of the proceedings is transcribed solely to allow the appellee to determine whether the partial transcript will be adequate for the determination of the issues presented by the appeal. Such a statement is not the equivalent of an assignment of errors, which is nowhere required in the proposed rules, and the statement would not result in limiting the issues on appeal. The precise statement of the issues presented by the appeal is to be made in the brief. An appellee who can show that he was misled by the statement required by this subdivision and in consequence failed to designate for transcription material parts of the reported proceedings may seek relief under subdivision (e) of this rule."

The second and third sentences of this subdivision following the title are added to the Federal Draft to make the duty which rests on the appellant more specific. Also, the second paragraph of this subdivision has been expanded to afford protection to an appellant against payment of costs of a transcript of unnecessary portions of the proceeding ordered by a respondent. And the last paragraph, requiring the reporter to certify the correctness of the transcript, has been added to the Federal Draft.

Subdivision (c). The provision of the Federal Draft for settlement has been expanded, patterned after section 93-5508; also, because memories are short, there has been added a time limit for the preparation of the statement.

Subdivisions (d) and (e) are the same as the provisions of the federal draft, adjusted to the Montana court system.

Cost of Transcript

Under rule providing that court "may impose upon the respondent the cost of producing any part of the record which it deems unnecessary for the determination of the issues," court determined that cost of portion of transcript ordered by respondent, which did not bear on any issue presented upon appeal, should be assessed against respondent. Ratcliff v. Murphy, 150 M 31, 430 P 2d 627.

Failure to Perfect Appeal

Appeal was dismissed where appellants had failed to request parts of the transcript within the time allowed by subdivision (b) of this rule, had not requested preparation of any portion of the record on appeal, had failed to pay for copies of documents requested or portions of the transcript prepared, had failed to transmit any part of the record on appeal to the supreme court, had failed to docket the appeal or pay the docket fee, and had failed, within the time allowed by the chief justice, to replace counsel desiring to withdraw with good cause. Larry C. Iverson, Inc. v. United Bank of Pueblo, 158 M 223, 490 P 2d 352.

DECISIONS UNDER FORMER LAW

Evidence Not in Record

Merits of appeal could not be determined where purported transcript on appeal did not contain certificate of judge that records included in the transcript had been used at the hearing. Anderson v. Mennie, 144 M 105, 394 P 2d 853, 854.

Late Presentment of Bill

A bill of exceptions presented after the time prescribed in former section 93-5505 was a nullity and could not be considered on appeal. Anderson v. Mennie, 144 M 105, 394 P 2d 853, 854.

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 10. Transmission of the record.

(a) TIME FOR TRANSMISSION—NUMBER OF COPIES OF TRANSCRIPT—DUTY OF APPELLANT. The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this rule. Six copies of each transcript must be lodged with the clerk of this court for filing. Promptly after filing the notice of appeal the appellant shall comply with the provisions of Rule 9(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of Rule 9(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(b) DUTY OF CLERK TO TRANSMIT THE RECORD. When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless

he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the supreme court.

(c) EXTENSION OF TIME FOR TRANSMISSION OF THE RECORD—REDUCTION OF TIME. The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

(d) RETENTION OF THE RECORD IN THE DISTRICT COURT BY ORDER OF COURT. The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court, and transmission of the copy of the docket entries shall constitute transmission of the record.

(e) STIPULATION OF PARTIES THAT PARTS OF THE RECORD BE RETAINED IN THE DISTRICT COURT. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their

transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(f) RECORD FOR PRELIMINARY HEARING IN THE SUPREME COURT. If prior to the time the record is transmitted a party desires to make in the supreme court a motion for dismissal, for a stay pending appeal, for additional security on the undertaking on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the supreme court such parts of the original record as the party shall designate.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 11 of the Federal Draft.

Subdivision (a). This subdivision fixes the time for transmission rather than for filing at 40 days after the filing of the notice of appeal, thus enabling the parties to know with certainty precisely when the complete record must be transmitted to the supreme court. The only justification for delay between filing the notice of appeal and the transmission of the record to the supreme court is the time required for securing a transcription of the trial proceedings. If the appellant is prevented from securing the necessary transcript within the 40-day period by circumstances beyond his control, he may seek an extension of time for transmitting the record.

The requirement that the appellant take any other action necessary to enable the clerk to assemble and transmit the record emphasizes the primary responsibility of the appellant for effecting timely transmission of the record. His responsibilities include, for example, the payment of any required fee or charge.

Subdivision (b). The appellant is allowed 40 days between the filing of the notice of appeal and the transmission of the record in order to allow him to secure the necessary transcript. If the transcript is available sooner, the allowance is unnecessary, and either party may oblige the clerk of the district court to transmit the record forthwith. On the other hand, unless the record contains the necessary transcript, the clerk is not to transmit it.

Subdivision (c). Cause for extension of the time by either the district or the supreme court must be shown. The final sentence permits any party to expedite the appeal in cases in which the record is complete by obtaining an order that the record be transmitted and the appeal docketed at a date earlier than otherwise allowed or fixed.

Subdivision (d). This subdivision permits the record to be retained in the district court by order of the supreme court, or order of the district court subject to the order of the supreme court. Especially in cases where the judgment or order does not dispose of the entire litigation, retention of the record in the district court may be a convenience for counsel and the district court. In some cases there may be no need for the transmission of the record, and the labor and expense of transmission may be saved.

Subdivision (e). This subdivision permits parties to stipulate against transmission of designated parts of the record free from the fear that a mistake may substantially affect the scope of the appeal. The final sentence makes it clear that a stipulation that designated parts of the record not be transmitted in no way diminishes the record itself. In effect, a party may at any time revoke his stipulation against transmission of parts of the record.

Subdivision (f). The substance of this subdivision was taken from Fed. R. Civ. P., Rule 75(j).

Dismissal of Appeal

Appeal was dismissed where appellants had not transmitted any part of the record on appeal within the time required by subdivision (a) of this rule, had not applied for an extension of time, had not requested parts of the transcript from the district court clerk within the time allowed, had not requested preparation of any part of the record on appeal, had not paid for copies of documents requested or portions of the transcript prepared, had not docketed the appeal or paid the docket fee, and had failed, within the time allowed by the chief justice, to replace counsel desiring to withdraw with good cause. Larry C. Iverson, Inc. v. United Bank of Pueblo, 158 M 223, 490 P 2d 352.

Rule 11. Docketing the appeal—Filing of the record.

(a) DOCKETING THE APPEAL. Within the time allowed or fixed for transmission of the record, the appellant shall pay to the clerk

of the supreme court the fee for filing the record on appeal fixed by section 82-503 of the 1947 Revised Codes of Montana, and the clerk shall thereupon enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) FILING OF THE RECORD. Upon receipt of the record by the clerk of the supreme court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(c) DISMISSAL FOR FAILURE OF APPELLANT TO CAUSE TIMELY TRANSMISSION OR TO DOCKET APPEAL. If the appellant shall fail to cause timely transmission of the record or to pay the filing fee if a filing fee is required, any respondent may file a motion in the supreme court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. The clerk shall docket the appeal for the purpose of permitting the court to entertain the motion, without requiring payment of the filing fee, but the appellant shall not be permitted to appear without payment of the fees unless he is otherwise exempt therefrom. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 12 of the Federal Draft, with adjustments to state practice. The provision of section 82-503 for a fee for filing the "transcript" on appeal will apply to the "record" on appeal pursuant to these rules.

The appellant's responsibility with respect to docketing and filing are specified. The appellant may pay the filing fee at any time after filing the notice of appeal, and it is then the duty of the clerk of the supreme court to enter the appeal on the docket. The appellant's responsibility is (1) to pay the filing fee at or before the time allowed or fixed for transmission of the record, and (2) to insure that the record is transmitted to the supreme court within the time allowed or fixed for its transmission. The clerk of the supreme court is directed to assign to cases on appeal the title which was used in the district court in the interest of facilitating future reference and citation and location of cases in indexes.

Dismissal of Appeal

Appeal was dismissed where appellants had failed to docket the appeal or pay the docket fee, had not requested parts of the transcript within the time allowed, had not requested preparation of any part of the record on appeal, had not paid for copies of documents requested or portions of the transcript prepared, had not transmitted any part of the record on appeal to the supreme court, and had not, within the time allowed by the chief justice, replaced counsel desiring to withdraw for good cause. Larry C. Iverson, Inc. v. United Bank of Pueblo, 158 M 223, 490 P 2d 352.

DECISIONS UNDER FORMER LAW

Notice of Appeal

Where appellant sought to amend notice of appeal from a nonappealable order so as to make it an appeal from final judgment, the supreme court acquired no jurisdiction to allow such amendment when the statutory provisions for time and manner of appeal were not complied with. Payne v. Mountain States Telephone & Telegraph Co., 142 M 406, 385 P 2d 100.

Rule 12. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8020.

Rule 13. Acts of executors, administrators or guardians valid when appointment vacated.

When the judgment or order appointing an executor, or administrator, or guardian is reversed on appeal, for error, and not for want of jurisdiction of the court, all lawful acts in administration upon the estate performed by such executor, or administrator, or guardian, if he have qualified, are as valid as if such judgment or order had been affirmed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8016.

Rule 14. Ruling against respondent may be reviewed.

Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection or exception of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings, and the objections and exceptions thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. And no cause shall be reversed upon appeal by reason of any error committed by the trial court against the appellant, where the record shows that the same result would have been attained had such trial court not committed an error or errors against the respondent.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8023, but eliminates references to bills of exceptions and statements of the case properly settled because these rules nowhere provide for such bills and statements.

Rule 15. Remedial powers of the supreme court.

When the judgment or order is reversed or modified, the supreme court may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent

with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment, on an appeal from which the proceedings were not stayed; and for relief in such cases the appellant may have his action against the respondent, enforcing the judgment for the proceeds of the sale of the property, after deducting therefrom the expenses of the sale.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates R. C. M. 1947, section 93-8024, substituting "supreme court" for "appellate court" and eliminating the provision for damages when the appeal is made for delay. Rule 32 covers the matter of damages.

Rule 16. Remittitur must be certified to the clerk of the district court.

When judgment is rendered upon the appeal, it must be certified by the clerk of the supreme court to the clerk of the district court from which the appeal is taken. The clerk of the district court must enter at length in the records of the court the certificate received. Also, in cases of appeal from a judgment, the clerk must enter a minute of the judgment of the supreme court on the docket against the original entry; and in cases of appeal from an order, he must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the supreme court on appeal.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates the substance of R. C. M. 1947, section 93-8025, but eliminates references to the judgment roll, which is nowhere provided for in these rules.

III. ORIGINAL PROCEEDINGS—EXTRAORDINARY WRITS

Rule 17. Acceptance and manner of conducting.

Rule 17. Acceptance and manner of conducting.

(a) WHEN ACCEPTED. The supreme court is an appellate court but it is empowered by the constitution of Montana to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the supreme court is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the trial courts and due appeal to this court an inadequate remedy, or when supervision of a trial court other than by appeal is deemed necessary or proper.

(b) HOW COMMENCED AND CONDUCTED. Proceedings commenced in the supreme court originally to obtain writs of habeas corpus, injunction, review, mandate, quo warranto, supervisory control, and other remedial writs or orders, shall be commenced and conducted in the manner prescribed by the Code of Civil Procedure for the conduct of such or analogous proceedings and by these additional rules. All papers filed shall conform to the requirements of Rule 27, except typewritten applications, briefs, copies of exhibits and the like may be used without securing

permission of the chief justice as required by Rule 27(a). The provisions of Rule 27(b) shall be observed.

(c) APPLICATIONS—WHEN FILED. The moving party's application shall be filed with the clerk of the supreme court one hour prior to its presentation to the court.

(d) APPLICATIONS—WHAT TO CONTAIN. The application for the issuance of any of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated or expected to be raised in the proceeding, and also the fact which renders it necessary and proper that the writ should issue originally from the supreme court; the said matters will be taken into consideration by the court in determining the necessity and propriety of accepting jurisdiction and granting the alternative writ or order to show cause. Each application shall also set forth as exhibits, without repetition of title of court and cause, a copy of each judgment, order, notice, pleading, document, proceeding or court minute referred to in the application, or necessary to make out a prima facie case or to substantiate the pleading or conclusion or legal effect. A memorandum of authorities must be filed with the application. On original applications counsel shall file with the clerk of this court the original court file, with the original application, unless for some reason the same is not available.

(e) APPLICATIONS—HOW AND WHEN PRESENTED. The supreme court will receive and hear original applications in open court on any day when the court is in session; but at least an hour's prior notice of such presentation shall be given by counsel to the chief justice or acting chief justice. Not over fifteen minutes shall be allowed for the presentation of any such application unless on prior request further time is granted.

(f) ISSUANCE OF ALTERNATIVE WRIT OR ORDER TO SHOW CAUSE. This court will, as promptly as possible after the presentation of an application, either dismiss the same, issue an alternative writ, order to show cause, or such other remedial writ or order as it deems expedient.

(g) BRIEFS. At or before the time set for final hearing, each party shall serve and file his brief in full conformance with Rules 20, 23 and 27, and containing a statement of the facts and of the points of law applicable, with the authorities relied upon.

(h) HEARING—WHEN HAD. Unless otherwise ordered the hearing shall be had at the time fixed for the return. At or prior to said return time the opposing party shall serve and file, without waiver, any and all pleadings and motions desired to be presented, including answer or return, and all issues shall be argued at the hearing, the applicant opening and closing, and the parties being allowed the same time as upon argument of appeals. If testimony becomes necessary a reference will be ordered.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added to the second sentence of subdivision (b) the clause excepting typewritten papers; added the third sentence to subdivision (b); and added the final sentence to subdivision (d).

Supreme Court Memorandum

In October, 1969, the Supreme Court issued a Memorandum to Counsel, reading as follows:

"In order to facilitate presentation and our consideration of applications prepared in accordance with Rule 17(d), M. R. App. Civ. P. for an original or remedial writ, in addition to the requirements of the rule, counsel should, if at all possible, bring to this Court the original district court file, together with transcript of any hearing, if the same has been reduced to writing, that has been had involving the matter sought to be inquired into.

"Compliance with this request will be appreciated."

See final sentence of subdivision (d) added by 1971 amendment.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule IV, with changes in subdivisions (e) and (f) designed to recognize that on original applications the court is not limited to the issuance of alternative writs or orders to show cause, but may issue whatever remedial writ or order it deems expedient.

Alternative Writs

State highway commission, ordered by district court to produce certain appraisals under discovery rules, was entitled to have order reviewed on allegations that order required production of irrelevant and privileged matter in excess of lower court's jurisdiction, that it was not an appealable order and that commission had no remedy at law, which allegations were sufficient to authorize issuance of alternative writ. State Highway Commission v. District Court, First Judicial District, 149 M 384, 427 P 2d 49.

Declaratory Judgment

Minimum Wage Act was of such importance to all citizens of state and of such nature as to justify original proceeding in supreme court for declaratory judgment as to constitutionality and as to application to firemen and policemen. City of Billings v. Smith, 158 M 197, 490 P 2d 221.

Injunction

Supreme court declined jurisdiction in original proceeding seeking injunction restraining defendant school districts from collecting certain fees and levies and requiring students to purchase certain material because no emergency existed, class action could be established in district court and thorough examination into multiple problems presented could not have been achieved. State ex rel. Thompson v. Elementary School Dist. No. 16, Hill County, 156 M 79, 474 P 2d 700.

Needless Litigation Prevented

Writ of supervisory control was proper where district court orders requiring state highway commission to quiet title against all possible lien holders of land subject to condemnation and to use valuation date more than three years beyond the alleged proper date were not appealable until after final judgment and this would result in extended and needless litigation if district court was wrong. State Highway Commission v. District Court, — M —, 499 P 2d 1228.

Writ of Supervisory Control

Writ of supervisory control to compel dismissal of removal petition that could not be granted even if the facts alleged were proved was a necessary and proper supervision of district court. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, 155 M 344, 472 P 2d 302.

References

State ex rel. Buttrey Foods, Inc. v. District Court, 148 M 350, 420 P 2d 845, 847.

IV. APPEALS IN FORMA PAUPERIS

Rule 18. Applications and manner of proceeding.

Rule 18. Applications and manner of proceeding.

(a) APPLICATION TO DISTRICT COURT. A party who desires to proceed on appeal in forma pauperis shall file in the district court a motion for leave so to proceed together with an affidavit showing, in

the detail prescribed by Form 2 of the Appendix of Forms, his inability to pay the fees and costs of the appeal or to give security therefor, his belief that he is entitled to redress, and a statement of the issues he intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the supreme court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the district court shall state the reasons for the denial.

(b) APPLICATION TO THE SUPREME COURT. If the motion for leave to proceed on appeal in forma pauperis is denied by the district court, a motion for leave so to proceed may be filed in the supreme court within 30 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the district court and of the statement of reasons for denial given by the district court.

(c) FORM OF BRIEFS, APPENDICES AND OTHER PAPERS. Parties allowed to proceed in forma pauperis may file briefs, appendices and other papers in typewritten form.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 23 of the Federal Draft, but omits the last clause of the Federal Draft reading "and may request that the appeal be heard on the original record without an 'appendix'." This change is made because these rules do not adopt the appendix system of Rule 30 of the Federal Draft. See Rule 25. This rule is believed to be consistent with R. C. M. 1947, section 93-8625.

V. GENERAL PROVISIONS

Rule 19. Record of commissions and oaths.
20. Filing and service.
21. Computation and extension of time.
22. Motions.
23. Briefs.
24. Brief of an amicus curiae.
25. The appendix to the briefs.
26. Filing and service of briefs.
27. Form of briefs, the appendix, motions and other papers.
28. Prehearing conference.
29. Oral argument.
30. Entry and notice of orders and judgments.
31. Interest on judgments.
32. Damages for appeal without merit.
33. Costs.
34. Petitions for rehearing.
35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.
36. Voluntary dismissal.
37. Substitution of parties.
38. Cases involving constitutional questions where the state is not a party.
39. Calendar—Withdrawal of records.
40. Appeals from injunction orders.
41. Statutes and rules amended.
42. Applicability in general.
43. Title—Effective date—Statutes superseded.

Rule 19. Record of commissions and oaths.

(a) COMMISSIONS AND OATHS. The commissions and oaths of the justices and the clerk of this court, and the attorney general shall be recorded in the records of this court.

(b) MINUTES OF COURT. The minutes of this court shall be approved by the chief justice (or in his absence by the associate justice having the shortest term to serve), and attested by the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rule I.

Rule 20. Filing and service.

(a) FILING. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him, in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 25 of the Federal Draft, but the phrase "including any transcript" has been added to subdivision (b) to make it clear that copies of any transcript are to be served on all parties. The first paragraph of Montana Supreme Court Rule III is superseded.

Rule 21. Computation and extension of time.

(a) COMPUTATION OF TIME. In computing any period of time prescribed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) EXTENSION OF TIME. The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; but the court may not extend the time for filing a notice of appeal, except as provided in Rule 5.

(c) ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 26 of the Federal Draft. There are omitted provisions of the Federal Draft with respect to petitions for allowance, applications for permission to appeal, appeals from advisory agencies, and a definition of "legal holiday." A definition of "legal holiday" is contained in R. C. M. 1947, section 19-107.

It is believed that these provisions are consistent with R. C. M. 1947, section 90-407.

Rule 22. Motions.

Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule supersedes Montana Supreme Court Rule XI. It is patterned after Rule 27 of the Federal Draft, but the last sentence of the Federal Draft requiring the filing of three copies of motions and supporting papers has been omitted. Also, there has been added as a last paragraph the amendment of the Montana Supreme Court Rule XI, effective January 1, 1965.

Rule 23. Briefs.

(a) BRIEF OF THE APPELLANT. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below,

e.g.: "The plaintiff brought this action in the district court to recover damages for the wrongful death of her husband. The jury returned a verdict for the plaintiff. On motion of the defendant the trial judge entered judgment for the defendant n. o. v. on the ground that there was no evidence to support a finding of negligence on the part of the defendant. From this judgment the plaintiff appeals."

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) BRIEF OF THE RESPONDENT. The brief of the respondent shall conform to the requirements of subdivision (a) (1) to (4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) REPLY BRIEF. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) REFERENCES IN BRIEFS TO PARTIES. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) REFERENCES IN BRIEFS TO THE RECORD. Whenever a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e. g., Answer, p. 7; Motion for Summary Judgment, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) REPRODUCTION OF STATUTES, RULES, REGULATIONS, ETC. If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the supreme court. When the error alleged is to the charge of the court, the brief of the parties shall set out with appropriate transcript references the part referred to totidem verbis, whether it be directed to instructions given or instructions refused.

(g) LENGTH OF BRIEFS AND COSTS. Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing

or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc. For purposes of assessing costs under R. C. M. 1947, section 93-8606, reasonable costs shall be limited as follows: For appellant's brief fifty (50) pages; for respondent's brief forty (40) pages; for reply brief fifteen (15) pages. In addition, reasonable costs for briefs shall be limited to $250 for appellant's brief and $200 for respondent's brief.

(h) BRIEFS IN CASES INVOLVING CROSS APPEALS. If a cross appeal is filed, the plaintiff in the court below shall be deemed the appellant for the purposes of this rule and Rules 25 and 26, unless the parties otherwise agree or the court otherwise orders. The brief of the respondent shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-10, Oct. 22, 1971, eff. Jan. 1, 1972.

Amendments

The 1971 amendment added the third sentence to subdivision (f).

Advisory Committee's Note

This rule is patterned after Rule 28 of the Federal Draft, adjusted to state practice. The second paragraph of subdivision (e) of the Federal Draft is omitted, since these rules do not adopt the "appendix" system of Rule 30 of the Federal Draft. See Rule 25.

Also, in the Federal Draft, subdivision (f) requires reproduction of statutes, rules, regulations, etc. This has been changed, so that reproduction is permissive, unless ordered by the supreme court.

Rule 24. Brief of an amicus curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 29 of the Federal Draft. It follows the practice of a majority of federal circuits in requiring leave of court to file an amicus brief unless the litigants consent to its filing.

Rule 25. The appendix to the briefs.

(a) USE OF AN APPENDIX. At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) CONTENTS OF THE APPENDIX. Unless otherwise ordered by the supreme court, an appendix shall contain: (1) the relevant docket entries in the proceeding below; (2) any relevant pleading and relevant portions of the charge, finding and opinion; (3) the judgment, order or decision in question; and (4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in

the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) ARRANGEMENT OF THE APPENDIX. At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where that page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) REPRODUCTION OF EXHIBITS. Exhibits may be contained in a separate volume, suitably indexed.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rules 30 and 31 of the Federal Draft, require post-brief appendices, unless dispensed with by court rule or order. The rule does not follow the Federal Draft at this point. Rather, under this rule the supreme court may order an appendix, or either party may if he chooses use an appendix. When an appendix is used it is to be filed and served with the brief.

Rule 26. Filing and service of briefs.

(a) TIME FOR FILING BRIEFS. The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) NUMBER OF COPIES TO BE FILED AND SERVED. Ten copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by Rule 20.

(c) CONSEQUENCES OF FAILURE TO FILE BRIEFS. If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 31 of the Federal Draft.

Subdivision (a) follows the time fixed for filing of briefs provided in the Federal Draft, and that is the time now allowed by a majority of the federal circuits.

Subdivision (b) of the Federal Draft is omitted, since it provides a post-brief time for filing the appendix. Under Rule 25 an appendix must be filed and served with the brief, unless otherwise ordered by the supreme court.

Subdivision (b) of this rule is patterned after subdivision (c) of the Federal Draft. The number of copies to be filed and served, however, are adjusted to fit state practice and the present requirement of Montana Supreme Court Rule II.

Subdivision (c) of this rule follows subdivision (d) of Rule 31 of the Federal Draft.

Rule 27. Form of briefs, the appendix, motions and other papers.

(a) FORM OF BRIEFS, APPENDICES AND SEPARATE VOLUMES OF EXHIBITS. Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) TYPEWRITTEN PAPERS AND MOTIONS. Papers not required to be produced in a manner prescribed by subdivision (a) of this rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and nonuniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) FIRST PAGE AND COVER. All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this rule, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of this court, the title of the case as in the court below, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require, the names of counsel for appellant and respondent, the title of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Rule 32 of the Federal Draft is adjusted to conform to the paper and forms prescribed for state practice and Montana Supreme Court Rule II, as amended effective January 1, 1965. The provisions requiring the use of pica type and two typewritten originals are stricken as being obsolete or unnecessary.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court or a judge thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceedings by the court. The court or judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issue to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceedings, unless modified to prevent manifest injustice.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 33 of the Federal Draft.

Rule 29. Oral argument.

(a) NOTICE OF HEARING—POSTPONEMENT. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) TIME ALLOWED FOR ARGUMENT. Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) ORDER AND CONTENT OF ARGUMENT. The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(d) CROSS AND SEPARATE APPEALS. A cross or separate appeal shall be argued with the initial appeal at a single hearing, unless

the court otherwise directs. If a case involves a cross appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument at the hearing.

(e) NONAPPEARANCE OF COUNSEL—FAILURE TO FILE BRIEFS. If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) SUBMISSION ON BRIEFS. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) USE OF PHYSICAL EXHIBITS AT HEARING—REMOVAL. If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 34 of the Federal Draft, but the time provisions are more liberal than those of the Federal Draft which allows 30 minutes to each side. It is intended that the time be afforded to opposing interests rather than to individual parties, as is true under the Federal Draft. Thus, if there are multiple appellants they have together but 40 minutes, and multiple respondents have a total of 30 minutes. The 40 minutes for the appellant or applicant may be divided between the opening and closing statement, as the appellant or applicant chooses.

In other particulars this rule follows the usual practice among the federal circuits.

Rule 30. Entry and notice of orders and judgments.

(a) ENTRY AND NOTICE. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 36 of the Federal Draft. The purpose is to clarify what constitutes an entry of a judgment or order. The provision for mailing by the clerk is for the convenience of the parties but does not affect the time for taking an appeal, which is controlled by Rule 5. As to the entry of judgments, see M. R. Civ. P., Rule 58.

Rule 31. Interest on judgments.

If a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered or made in the district court. If a judgment is modified or

reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The language of Rule 37 of the Federal Draft is modified to conform to R. C. M. 1947, section 93-8622.

Rule 32. Damages for appeal without merit.

If the supreme court is satisfied from the record and the presentation of the appeal, that the same was taken without substantial or reasonable grounds, but apparently for purposes of delay only, such damages may be assessed on determination thereof as under the circumstances are deemed proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

The language of Montana Supreme Court Rule XIX is substituted for that of Rule 38 of the Federal Draft.

Damages Not Allowed

Appellee was not entitled to recover additional damages under this rule where appellant had a reasonable ground for appeal. Larry Larson & Associates v. John R. Daily, Inc., 158 M 231, 490 P 2d 355.

Rule 33. Costs.

(a) COSTS ON APPEAL. Costs on appeal will be taxed as provided by R. C. M. 1947, section 93-8606, and if not otherwise provided by the Court in its decision, will automatically be awarded to the successful party against the other party. All costs on appeal shall be claimed as provided by section 93-8621, R. C. M. 1947.

(b) COSTS OF BRIEFS AND APPENDICES. The cost of printing or otherwise producing briefs and appendices shall be taxable at rates not higher than specified in Rule 23(g).

(c) OTHER COSTS TAXABLE. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

(d) COSTS IN ORIGINAL PROCEEDINGS. Costs in original proceedings, including reviews other than by appeal, will be taxed as provided by R. C. M. 1947, sections 93-8602, 93-8603, 93-8604 and 93-8611, and if not otherwise provided by the court in its decision, will be awarded to the successful party against the other party; provided, however, that costs awarded to plaintiff or relator in special proceedings to review inferior court rulings, orders or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the inferior court's action, rather than against the state, county, municipality, subdivision, judge or justice.

(e) UNNECESSARY COSTS. Whenever it appears that the successful party has caused any redundant, useless or unnecessary matter

to be incorporated in the record, briefs, or appendices, whether on appeal or in a special proceeding, he shall not recover as part of his costs so much of the expense as is occasioned thereby.

(f) NOTATION BY CLERK. The clerk of the supreme court shall, in all cases, include in the order of judgment of affirmance, reversal or modification on appeal, or for the issuance of a peremptory writ in an original proceeding, and in the remittitur, peremptory writ or judgment, a clause awarding the costs in accordance with this rule or the special order of this Court, to be recovered after claim and ascertainment or taxation thereof in the manner prescribed by law; and the clerk shall also furnish therewith an itemized statement of such costs as have been paid by him.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-8, Sept. 10, 1968, eff. Jan. 1, 1969.

Amendments

The amendment of September 10, 1968, in subdivision (a), added the last sentence; in subdivision (b), deleted "in the supreme court" after "taxable" and deleted a second sentence reading "A party who desires such costs to be taxed shall state them in a verified bill of costs which he shall file with the clerk, with proof of service, within 14 days after entry of judgment"; in subdivision (c), substituted the present caption for "costs taxable in the District Court[s]"; in subdivision (f), inserted "the" before "costs in accordance", deleted "in the supreme court" before "in accordance" and substituted "by" for "to" before "him."

Advisory Committee's Note

This rule is a combination of Rule 39 of the Federal Draft and Montana Supreme Court Rule XVIII. With some adjustment of language, subdivision (a) is taken from the Montana Rule; subdivisions (b) and (c) from the Federal Draft; and subdivisions (d), (e) and (f) from the Montana Rule.

Advisory Committee's Note to September 10, 1968 Amendment

The amendments to Rule 33(a), (b), (c) and (f) are to make it clear that all costs on appeal are claimed in the court below after remittitur and eliminate the former duplication of cost bills in both the supreme court and district court.

Rule 34. Petitions for rehearing.

When, in appeals or special proceedings, it is ordered that remittitur, peremptory writ or judgment issue forthwith, no petition for rehearing will be entertained. In all other cases a petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit, and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none other: That some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. Six copies of the petition and six copies of objections thereto, which may be in typewritten form, shall be filed with the clerk.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966; amd. Sup. Ct. Ord. 10750-7, Sept. 29, 1967, eff. Jan. 1, 1968.

Amendments

The amendment of September 29, 1967 substituted "fact" for "facts" following the colon; deleted a former, next to last

sentence reading "No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will not ordinarily be granted in the absence of such a request"; and substituted "and six copies of objections * * * form" for "produced in accordance with Rule 27(a)."

Advisory Committee's Note

This rule is patterned in part after Rule 40 of the Federal Draft. However, the first sentence is added from Montana Supreme Court Rule XV, as is the statement of the grounds for the petition and the procedure for serving and filing objections; also the 14 days for filing provided in the Federal Draft has been shortened to conform to state practice, and the number of copies required has been reduced from 25 to 6. The second sentence provides for filing of the petition within 10 days after "the decision of the supreme court has been rendered," rather than after "entry of judgment" as provided by the Federal Draft. The purpose is to avoid uncertainty as to when a judgment has been entered, which might exist under the language of the Federal Draft where the mandate of the supreme court is returned to the district court and there entered.

Advisory Committee's Note to September 29, 1967 Amendment

Source: None.

This amendment would dispense with requests by the court as a condition to filing replies to petitions for rehearing, and would permit petitions and objections thereto to be typewritten in the form prescribed by Rule 27(b).

Rule 35. Notice and copy of decision—Remittitur—Mandate from United States supreme court.

(a) NOTICE AND COPY OF DECISION TO BE FURNISHED. Upon the decision of a cause, notice thereof, together with a copy of the court's written decision, will immediately be mailed to counsel for each party.

(b) REMITTITUR — WHEN ISSUED — WHEN COPY OF OPINION TO ACCOMPANY. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of time for filing petition for rehearing, or, if such petition is filed, then upon the denial thereof, unless a modification of the decision is made which permits a further petition for rehearing. A copy of the opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

(c) MANDATE FROM UNITED STATES SUPREME COURT—PROCEDURE THEREON. Upon receipt by the clerk of the supreme court of Montana of a mandate from the supreme court of the United States in any case at law or in equity theretofore taken from the supreme court of Montana to the supreme court of the United States, it shall be the duty of said clerk forthwith to issue under his hand and the seal of the supreme court of Montana a remittitur to the district court by which the judgment was rendered, commanding such court to take such action in the premises as by the mandate shall be proper, and said remittitur shall also contain therein a recital in haec verba of the said mandate, and all the costs subsequent to the appeal from said district court shall be taxed in such remittitur.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates Montana Supreme Court Rules XIV, XXI, and XXII.

Rule 36. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 42 of the Federal Draft.

Rule 37. Substitution of parties.

(a) DEATH OF A PARTY. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the supreme court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the supreme court. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 20. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the supreme court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the supreme court in accordance with this subdivision.

(b) SUBSTITUTION FOR OTHER CAUSES. If substitution of a party in the supreme court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) PUBLIC OFFICERS—DEATH OR SEPARATION FROM OFFICE.

(1) When a public officer is a party to an appeal or other proceeding in the supreme court in his official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding he may be described as a party by his official title rather than by name; but the court may require his name to be added.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is taken from Rule 43 of the Federal Draft.

Rule 38. Cases involving constitutional questions where the state is not a party.

It shall be the duty of counsel who challenges the constitutionality of any act of the Montana legislature in any suit or proceeding in the supreme court to which the state of Montana, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record to give immediate notice in writing to the court of the existence of said question, specifying the section of the Code or the chapter of the session law to be construed. The clerk shall thereupon certify such fact to the attorney general of the state of Montana.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule is patterned after Rule 44 of the Federal Draft.

Rule 39. Calendar—Withdrawal of records.

(a) PLACING CAUSES UPON CALENDAR. Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) SETTING CAUSES FOR ARGUMENT. As often as found convenient, causes on the calendar will be set for argument by the court in the chronological order in which they have been placed on the calendar, except such causes as are determined entitled to precedence or as otherwise ordered by the court. Oral arguments will not be heard during the months of July and August.

(c) ADVANCEMENT OF CAUSES. Appeals from orders dissolving, refusing to dissolve, granting or refusing to grant writs of injunction, appeals from orders dissolving or refusing to dissolve attachments, appeals from orders appointing or refusing to appoint receivers, appeals from orders or judgments holding appellant in custody, and workmen's compensation appeals, are entitled to precedence and will, upon motion of either party, be advanced on the calendar.

(d) PERMISSION TO TAKE RECORD FROM CLERK'S OFFICE. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

Montana Supreme Court Rules XIII and XVI have been substituted for the provisions of Rule 45 of the Federal Draft.

Rule 40. Appeals from injunction orders.

Upon appeal from an order dissolving or refusing an injunction, if the appellant desires to continue in force the injunction order dissolved by the district court, or to obtain such injunction order pending the appeal, he shall apply to the district court under Rule 62 of the Montana Rules of Civil Procedure. In the event the relief there requested be not granted he may file in the supreme court his sworn application, setting forth the proceedings appealed from and the relief desired, and present with it to the supreme court, a verified copy of the affidavits or evidence used on the hearing in the district court. Such application will be heard ex parte and without argument, and the court, upon such record will make such order in the premises as may be proper.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates the substance of Supreme Court Rule XXIII, as amended effective April 3, 1963.

Rule 41. Statutes and rules amended.

[This rule amended Rule 72 of the Montana Rules of Civil Procedure, and R. C. M. 1947, sections 93-5708, 93-8001, 93-8002, 93-8013 and 93-9905, subdivision 3. For text of amendments see the designated sections.]

Rule 42. Applicability in general.

(a) SPECIAL STATUTORY PROCEEDINGS. The statutory proceedings listed in Table A of the Montana Rules of Civil Procedure and any other special statutory proceedings, whether or not listed in said Table A, are excepted from these rules in so far as they are inconsistent or in conflict with the procedure and practice provided by these rules.

(b) APPEALS TO DISTRICT COURTS. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, which shall govern procedure and practice relating thereto in so far as they are not inconsistent with these rules.

(c) RULES INCORPORATED INTO STATUTES. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court or in the Montana supreme court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, in so far as practicable.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This Rule is patterned after Rule 81 of the Montana Rules of Civil Procedure. It excepts inconsistent special statutory proceedings and appeals to and reviews by the district courts to the extent that they are governed by inconsistent statutes and it is impracticable to incorporate procedures provided by these rules. But statutes such as sections 93-9302, 93-9303, 93-9718, 93-9719, and 93-9922, which contain catch-all references to the applicability of statutes which have been superseded, are brought into line with these rules in so far as practicable.

Rule 43. Title—Effective date—Statutes superseded.

(a) TITLE. These Rules shall be known as the Montana Rules of Appellate Civil Procedure and may be cited as M. R. App. Civ. P.

(b) EFFECTIVE DATE AND APPLICATION TO PENDING PROCEEDINGS. These rules will take effect on January 1, 1966. They govern all appeals and original proceedings brought after they take effect, and also all further proceedings in appeals and original proceedings then pending, except to the extent that in the opinion of the supreme court their application in a particular appeal or original proceeding pending when the rules take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the appeal or original proceeding was brought applies.

(c) STATUTES AND RULES SUPERSEDED. Upon the taking effect of these rules all statutes and rules, and parts thereof, in conflict herewith, and the statutes and rules listed in Tables A, B, and C, in so far as they relate to civil proceedings, are superseded in respect of practice and procedure on appeals from the district courts to the supreme court and in original proceedings brought in the supreme court.

History: En. Sup. Ct. Ord. 11020, Dec. 10, 1965, eff. Jan. 1, 1966.

Advisory Committee's Note

This rule incorporates provisions similar to those contained in Rules 85 and 86 of the Montana Rules of Civil Procedure. Subdivision (c) refers to statutes and rules only in so far as they relate to civil proceedings, to make it clear that criminal proceedings are in no way affected by these rules.

Appendix of Forms.

Form 1.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE STATE OF MONTANA FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B. ..... Plaintiff
vs.
C. D. ..... Defendant
} Notice of Appeal

Notice is hereby given that C. D., defendant above-named, hereby appeals to the supreme court of the state of Montana (from the final judgment) (from the order (describing it)) entered in this action on the .....day of ....., 19.....

(S) .....

.....

Attorney for C. D.
(Address)

Form 2.

AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN FORMA PAUPERIS

IN THE DISTRICT COURT OF THE ..... JUDICIAL DISTRICT OF THE STATE OF MONTANA, IN AND FOR THE COUNTY OF .....

A. B. Plaintiff
vs.
C. D. Defendant

AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS

I, ..., being first duly sworn, depose and say that I am the ..... in the above-entitled case; that in support of my application to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

.....

.....

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
   b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
   a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.
3. Do you own any cash or checking or savings account?
   a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
   a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

.....

Subscribed and Sworn to before me this ..... day of ....., 19 .....

.....

Notary Public

Let the applicant proceed without prepayment of costs.

District Judge

Table A. List of Statutes and Rules Superseded or Amended.

Statutes Superseded (R. C. M. 1947, sections)	R.S.C.M.* Superseded, except as applicable to criminal procedure	M.R.Civ. P.** Rule
93-5501		Superseded
93-5503		62(a)
93-5504	Rule	62(d)
93-5505	I	Amended
93-5506	II	72
93-5507	III (1st par.)	
93-5508	IV	
93-5509	VI	
93-5607	VII	
93-5608	VIII	
93-5702	IX	
93-5707	X	
93-8003	XI	
93-8004	XII	
93-8005	XIII	
93-8006	XIV	
93-8011	XV	
93-8012	XVI	
93-8014	XVII	
93-8015	XVIII	
93-8016	XIX	
93-8017	XXI	
93-8018	XXII	
93-8019	XXIII	
93-8020	XXIV	
93-8021		
93-8022		
93-8023		
93-8024		
93-8025		
Amended		
93-5708		
93-8001		
93-8002		
93-8013		
93-9905(3)		

* Rules of the Supreme Court of Montana.

** Montana Rules of Civil Procedure.

Table B. List of Rules of Appellate Civil Procedure Superseding, in Whole or in Part, or Amending, Statutes and Rules.

M. R. App. Civ. P.*	Statutes and Rules** Superseded or Amended (R. C. M. 1947, sections)
Rule	
1	93-8001, 93-8002, 93-8003, 93-8017
2	93-8022
3	93-8019, R. S. C. M. XXIV
4	93-8005, 93-8019
5	93-8004
6	93-8005, 93-8006, 93-8012, 93-8015, 93-8019
7	93-5607, 93-8011, 93-8012, 93-8014, M. R. Civ. P. 62(a), 62(d)
8	93-8013
9, 10, and 25	93-5504 to 93-5509, incl., 93-5608, 93-5707, 93-8018, 93-8019, 93-8021 R. S. C. M. VII, VIII, IX, XVIII subd. 3
11	93-8019, R. S. C. M. VI
12	93-8020
13	93-8016
14	93-8023
15	93-8024
16	93-8025
17	R. S. C. M. IV
19	R. S. C. M. I
20	R. S. C. M. III (1st par.)
22	R. S. C. M. XI
23	R. S. C. M. X
26	R. S. C. M. II subd. 4, III (1st par.)
27	R. S. C. M. II
29	93-5702, R. S. C. M. XII
32	R. S. C. M. XIX
33	R. S. C. M. XVIII
34	R. S. C. M. XV
35	R. S. C. M. XIV, XXI, XXII
37	R. S. C. M. XVII
39	R. S. C. M. XIII, XVI
40	R. S. C. M. XXIII
41	M. R. Civ. P. 72, 93-5708, 93-9905 (3), 93-8001, 93-8002, 93-8013

* Montana Rules of Appellate Civil Procedure are abbreviated "M. R. App. Civ. P."

** Rules of the Supreme Court of Montana are abbreviated "R. S. C. M." Montana Rules of Civil Procedure are abbreviated "M. R. Civ. P."

Table C. List of Statutes and Rules Superseded, in Whole or in Part, or Amended, by Designated Rules of Appellate Civil Procedure.

Statutes (R. C. M. 1947, sections)	M. R. App. Civ. P. Rule
93-5504 to 93-5509, incl.	9, 10, 25
93-5607	7
93-5608	9, 10, 25
93-5702	29
93-5707	9, 10, 25
93-5708	41
93-8001	1, 41
93-8002	1, 41
93-8003	1
93-8004	5
93-8005	4, 6
93-8006	6
93-8011	7
93-8012	6, 7
93-8013	8, 41
93-8014	7
93-8015	6
93-8016	13
93-8017	1
93-8018	9, 10, 25
93-8019	4, 6, 9, 10, 11, 25
93-8020	12
93-8021	9, 10, 25
93-8022	2
93-8023	14
93-8024	15
93-8025	16
93-9905 (3)	41

Rules of the Supreme Court of Montana	
I	19
II	26, 27
III (1st par.)	20, 26
IV	17
VI	11
VII	9, 10, 25
VIII	9, 10, 25
IX	9, 10, 25
X	23
XI	22
XII	29
XIII	39

XIV 35
XV 34
XVI 39
XVII 37
XVIII 9, 10, 25, 33
XIX 32
XXI 35
XXII 35
XXIII 40
XXIV 3

Montana Rules of Civil Procedure

62(a) 7
62(d) 7
72 41

REVISED CODES OF MONTANA

VOLUME 8

1973 Cumulative Pocket Supplement

Containing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 8 OF THE 1947 REVISED CODES

AND

ANNOTATIONS SUPPLEMENTING REPLACEMENT VOLUME 8 THROUGH VOLUME 504, PACIFIC REPORTER (2ND SERIES)

Edited by

A. WAYNE GUERNSEY, A.B., J.D.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202



Copyright © 1971 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1973 by
The Allen Smith Company
Indianapolis, Indiana

NEW CRIMINAL CODE

Chapter 513, Laws of 1973, enacted a new Criminal Code effective January 1, 1974, constituting a complete revision, rearrangement and renumbering of Title 94 of the Revised Codes of Montana. New Title 94 is being published in a separate pamphlet.

Chapter 513 also transferred a number of sections of former Title 94 to Title 95 and other titles of the Revised Codes. This Pocket Supplement and the Pocket Supplements for other volumes involved contain notations as to the sections transferred from Title 94 to other titles by Chapter 513.

NEW LAWS IN VOLUME 8

For index see pocket supplement to Replacement Volume 9

ENACTED IN 1971

Junked motor vehicles, use in streams unlawful, 94-3552.1, 94-3552.2.
Litter control law, 94-3335 to 94-3344.

ENACTED IN 1973

Chain distributor schemes prohibited, 94-1832 to 94-1834.
Civil and constitutional rights lost on conviction of crime, 95-2227.
Contraceptives and prophylactics, advertising and sale, 94-3620 to 94-3623.
Corroboration required of person legally accountable for crime, 95-3012.
Double jeopardy and multiple prosecutions, 95-1711.
Extradition of persons charged with crime, 95-3101 to 95-3130.
Fines and forfeitures, disposition, 95-2228, 95-2229.
Homicide prosecution, burden of proof, 95-3004.
Offensive sexual material, public display, 94-3624 to 94-3626.
Parolee or probationer under interstate supervision, violation of conditions by, 95-3202.1 to 95-3202.4.
Persistent felon offender, increased sentence for, 95-1507.
Self-incriminating testimony, compelling on grant of immunity, 95-1807.
Sentence in criminal cases, 95-2206 to 95-2206.4.
Stop and frisk, 95-719.
Witnesses subject to interstate summons, 95-1808.

AMENDMENTS IN VOLUME 8

Alcoholic beverages, furnishing to minors, 94-35-106, 94-35-106.2.
Concealed weapons, persons authorized to carry, 94-3527.
Counsel for indigent defendants, payment, 95-1005.
Dismissal of prosecution, 95-1703.
Escape from state prison, 94-4203.
Executive clemency, 95-3223, 95-3224, 95-3228.
Grand jury, 95-1401, 95-1402, 95-1410.
Hunting in careless or reckless manner, 94-35-269.
Impeachment of officers, 95-2801, 95-2802.
Jury trial of criminal prosecutions, 95-1901, 95-1915.
Littering penalty, 94-3339.
Mental incompetence of criminal defendants, 95-506, 95-508.
Pawnbrokers, records required, 94-3702.
Probation and parole, 95-3205, 95-3220.
Receiving stolen property, 94-2721.
Roadblocks, checking for driver's license, 95-618.
Sentence and judgment in criminal case, 95-2007.
Stamps required by tax laws, failure to use or counterfeiting, 94-35-260.
Taxable property, owner's refusal to list or falsification of name, 94-1506.
Vending machines, possession of device to break into, 94-35-249.
Verdict in criminal case, 95-2006.

MONTANA REVISED CODES

TITLE 94—CRIMES AND CRIMINAL PROCEDURE

Chapter
15. Embezzlement and other offenses by public officers, 94-1506.
18. False personation and cheats, 94-1832 to 94-1834.
27. Larceny and falsification of public records and jury lists, 94-2721.
33. Malicious mischief generally, 94-3335 to 94-3344.
35. Miscellaneous offenses, 94-3527, 94-3552.1, 94-3552.2, 94-35-106, 94-35-106.2, 94-35-249, 94-35-260, 94-35-269.
36. Obscenity—literature—indecent exposure—houses of ill fame—prohibition of certain advertisements, 94-3620 to 94-3626.
37. Pawnbrokers—prohibitions, 94-3702.
42. Rescues and escapes, 94-4203.

CHAPTER 1—DEFINITIONS AND PRELIMINARY PROVISIONS

94-115. (10724) Punishment of felony, when not otherwise prescribed.

Application

This section was not applicable to defendant sentenced for armed robbery since it merely provides penalties for crimes not otherwise provided for in statutes. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.

Inmate's contention, on petition for writ of habeas corpus that his sentence of ten years' imprisonment was in excess of that allowable by statute due to operation of this section, was without merit since punishment for robbery is specifically provided for by section 94-4303 and this section provides penalties only for crimes not otherwise provided for in statutes. Petition of O'Rourke, 154 M 265, 461 P 2d 1.

CHAPTER 6—ASSAULTS

94-601. (10976) Assault in the first degree defined—penalty.

Criminal Intent

Dismissal of first-degree assault charge was properly refused where there was evidence to support finding of jury that defendant had necessary intent. State v. Bentley, 155 M 383, 472 P 2d 864.

Intent is to be judged objectively in first-degree assault cases and not by the secret motive of the actor or some undisclosed purpose merely to frighten. State v. Cooper, 158 M 102, 489 P 2d 99, overruling State v. Quinlan, 126 M 52, 244 P 2d 1058.

Sufficiency of Evidence

Evidence that defendant had previously threatened to kill sheriff and shortly thereafter pointed a loaded rifle at his stomach at point-blank range and said he was going to shoot him supported conviction of first degree assault. State v. Cooper, 158 M 102, 489 P 2d 99.

94-602. (10977) Assault in second degree.

Lesser Included Offense

Trial court properly refused to instruct jury on third-degree assault, limiting jury's determination to conviction or acquittal on second-degree assault, where grievous bodily harm was inflicted and only issue was whether act causing injury was accidental. State v. Manning, — M —, 499 P 2d 771.

Sufficiency of Evidence.

Where testimony indicated that only use of pistol by defendant was in restraining three girls who were hard to manage, used foul language, had taken sunglasses off racks with no apparent interest in purchasing any, spent a long time in the restroom and attempted to sell defendant and his helper magazines, and that one of the

girls had thrown a pop bottle in the general direction of the defendant, there was no substantial evidence as to the fear or apprehension of the girls and conviction was reversed. State v. Sanders, 158 M 113, 489 P 2d 371.

94-603. (10978) Assault in third degree.

Instructions to Jury

Trial court properly refused to instruct jury on third-degree assault, limiting jury's determination to conviction or acquittal on second-degree assault, where grievous bodily harm was inflicted and only issue was whether act causing injury was accidental. State v. Manning, — M —, 499 P 2d 771.

CHAPTER 7—BIGAMY AND INCEST

94-702. (11026) Exceptions.

Voidness of Former Marriage

Although bigamous marriage may be void from beginning for civil purposes, it nevertheless renders subsequent marriage bigamous under section 94-701 for criminal purposes, unless defendant can show that previous bigamous marriage was pronounced void, annulled or dissolved by competent court as provided under this section. Crosby v. Ellsworth, 431 F 2d 35.

CHAPTER 8—BRIBERY AND CORRUPTION

Section
94-808. [Transferred.]

94-808. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 16-3607.

CHAPTER 9—BURGLARY AND HOUSEBREAKING—POSSESSION OF BURGLARIOUS INSTRUMENTS AND DEADLY WEAPONS

94-901. (11346) Burglary defined.

Possession of Stolen Property

Trial court's instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. State v. Branch, 155 M 22, 465 P 2d 821.

Proof of Intent

Entry of tavern after closing hours with unauthorized duplicate key, and defendant's subsequent apprehension outside tavern with checks and currency identified as having come from tavern safe, showed entry with a felonious intent. State v. Harris, — M —, 498 P 2d 1222.

Sufficiency of the Information

Burglary, as set forth in this section must be charged in information; degree of burglary need not be charged but is a question for the jury, based on evidence presented. State ex rel. Wilson v. District Court, — M —, 498 P 2d 1217.

Section 95-1503, which sets forth the form of charge, is a general statute covering all criminal charges and does not require more particularity where a burglary charge is alleged than when any other felony is alleged. State ex rel. Wilson v. District Court, — M —, 498 P 2d 1217.

94-909. (11354) Carrying deadly weapon with intent to assault, etc.

Sufficiency of Evidence

Even though victim testified he did not know defendant had pistol, fact that witnesses shouted "he has a gun" and that defendant sought protective cover provided sufficient evidence for trial court to refuse to dismiss charge of violation of this section. State v. Bentley, 155 M 383, 472 P 2d 864.

CHAPTER 11—CRIMINAL CONSPIRACY AND ILLEGAL PRACTICES IN RESTRAINT OF TRADE—TRUSTS—DISCRIMINATIONS—POOLING GRAIN WAREHOUSES—DESTROYING FOOD

Section
94-1104, 94-1105. [Transferred.]
94-1107 to 94-1118. [Transferred.]

94-1104, 94-1105. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 51-401 and 51-402.

94-1107 to 94-1118. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as 51-403 to 51-414. Supplementary materials relating to these sections may be found in the current supplement to Volume Three, Part 2, as follows:

Old Sec.	Vol. 3, Pt. 2
94-1109	51-405
94-1113	51-409

CHAPTER 14—ELECTION FRAUDS AND OFFENSES—CORRUPT PRACTICES ACT

Section
94-1401 to 94-1460. [Transferred.]
94-1462 to 94-1476. [Transferred.]

94-1401 to 94-1460. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 23-4701 to 23-4760. Supplementary materials relating to these sections may be found in the current supplement to Volume Two, Part 2, as follows:

Old Sec.	Vol. 2, Pt. 2
94-1430	23-4730
94-1431	23-4731
94-1436	23-4736
94-1460	23-4760

94-1462 to 94-1476. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 23-4761 to 23-4775.

CHAPTER 15—EMBEZZLEMENT AND OTHER OFFENSES BY PUBLIC OFFICERS

Section
94-1506. Refusing to give the department of revenue or its agent list of property or giving false name.

94-1506. (11323) **Refusing to give the department of revenue or its agent list of property or giving false name.** Every person who unlawfully refuses, upon demand, to give to the department of revenue or its agent a list of his property subject to taxation, or to swear to such list, or who gives a false name or fraudulently refuses to give his true name to the department or its agent, when demanded by the department or its agent, in the discharge of his official duties, is guilty of a misdemeanor.

History: En. Sec. 775, Pen. C. 1895; re-en. Sec. 8597, Rev. C. 1907; re-en. Sec. 11323, R. C. M. 1921; amd. Sec. 111, Ch. 391, L. 1973. Cal. Pen. C. Sec. 429.

Amendments

The 1973 amendment substituted "the department of revenue or its agent" for "county assessor" throughout the section, in order to implement article VIII, section 3 of the 1972 constitution.

CHAPTER 18—FALSE PERSONATION AND CHEATS

Section
94-1832. Definitions.
94-1833. Chain distributor schemes illegal.
94-1834. Violation—felony.

94-1805. (11410) Obtaining money, etc. by false pretenses.

Fraudulent Checks

Fact that defendant charged under this section might instead have been charged under section 94-2702, a misdemeanor section, did not prevent his conviction under this section; a person may be guilty of violating more than one section by the same act. State v. Evans, 153 M 303, 456 P 2d 842.

94-1832. Definitions. As used in this act:

(1) "Person" means a natural person, corporation, partnership, trust or other entity and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors and other persons in act of control of the activities of each entity.

(2) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition.

History: En Sec. 1, Ch. 465, L. 1973.

Title of Act

An act prohibiting the use of chain distributor schemes; and providing a penalty.

94-1833. Chain distributor schemes illegal. It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

History: En. Sec. 2, Ch. 465, L. 1973.

94-1834. Violation—felony. Any person violating the provisions of this act shall be deemed guilty of a felony and upon conviction shall be imprisoned in the state prison for a period not to exceed one (1) year, or punishable by a fine not to exceed one thousand dollars ($1,000), or both such fine and imprisonment.

Any person convicted of a second offense under this act shall be imprisoned in the state prison for a period not to exceed five (5) years or punishable by a fine not to exceed five thousand dollars ($5,000) or both such fine and imprisonment.

History: En. Sec. 3, Ch. 465, L. 1973.

CHAPTER 20—FORGERY AND COUNTERFEITING

94-2014. Production of false identification documents.

Cross-References

Immunity of public entities for inaccurate identification cards, sec. 31-172.

CHAPTER 23—FRAUDS IN MANAGEMENT OF CORPORATIONS

Section
94-2322 to 94-2325. [Transferred.]

94-2322 to 94-2325. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 15-22-141 to 15-22-144.

CHAPTER 24—GAMBLING

94-2404. (11160) Possession of gambling implements prohibited.

Possession

This section prohibits mere possession of gambling equipment as opposed to use of such equipment; defendant who openly rebuilt and manufactured gambling devices for shipment to Nevada, where they are legal, violated this section. State v. Wilson, — M —, 503 P 2d 522.

CHAPTER 25—HOMICIDE

94-2507. (10959) Manslaughter—voluntary and involuntary.

Double Jeopardy

Prosecution for involuntary manslaughter was not barred by defendant's prior conviction upon guilty pleas to driving while intoxicated and operating motor vehicle with improper brakes arising from same accident. State v. McDonald, 158 M 296, 491 P 2d 711.

Due Caution or Circumspection

Where defendant put wife to bed when he found her in what he believed to be intoxicated state, knowing she had spent prior evening drinking and dancing, then went to dinner and later found wife unconscious on bar floor yet breathing well, and where he went for nurse next morning when her condition had not improved, he was not guilty of acting "without due caution or circumspection" within the meaning of subsection 2 even though wife died that night at hospital, apparently from a subdural hematoma. State v. Decker, 157 M 361, 485 P 2d 695.

Sufficiency of Evidence

Lack of due caution or circumspection in lawfully correcting child could be found from doctor's testimony that basal skull fracture and fatal liver transection required severe and extensive force. State v. Henrich, — M —, 498 P 2d 124.

94-2510. (10962) Proof of corpus delicti.

Jury Instructions

In conviction of first degree murder, trial court did not err in refusing defendant's proposed instructions which incorporated language of this section where proof of corpus delicti beyond reasonable doubt was included in another instruction. State v. Quigg, 155 M 119, 467 P 2d 692.

94-2511. (10963) Excusable homicide.

Sufficiency of Evidence

Evidence was sufficient to warrant jury finding that "usual and ordinary caution" was not exercised where doctor testified that basal skull fracture and fatal transection of liver were caused by an extensive and severe force. State v. Henrich, — M —, 498 P 2d 124.

94-2513. (10965) Justifiable homicide by other persons.

Self-Defense

Instruction on justifiable homicide and self-defense was not required where evidence showed that wife shot husband five times in alleged attempt to take weapon from him to prevent damage to property. State v. Eisenman, 155 M 370, 472 P 2d 857.

CHAPTER 27—LARCENY AND FALSIFICATION OF PUBLIC RECORDS AND JURY LISTS

Section
94-2721. Receiver of stolen property.

94-2702. (11369) Uttering fraudulent checks or drafts—evidence.

Felony Charge

Fact that defendant might have been charged under this section did not prevent his conviction under section 94-1805, a felony section; a person may be guilty of violating more than one section by the same act. State v. Evans, 153 M 303, 456 P 2d 842.

94-2704.1. Possession of stolen livestock as evidence of larceny.

Jury Instructions

Jury instruction in grand larceny case which quoted this section was proper under circumstances. State v. Perkins, 153 M 361, 457 P 2d 465.

Trial court did not commit reversible error in giving jury instruction taken verbatim from this section, since, even though state has burden of proof in criminal cases under section 94-7203, the burden of evidence may shift to defendant. State v. Gloyne, 156 M 94, 476 P 2d 511.

Receiving Stolen Livestock

State need not overcome presumption of larceny contained in this section to convict one in possession of stolen livestock of receiving stolen property under section 94-2721. State v. Watkins, 156 M 456, 481 P 2d 689.

94-2721. (11388) Receiver of stolen property. Every person who for his own gain or to prevent the owner from again possessing his own property buys or receives any personal property, knowing the same to have been stolen, is punishable by imprisonment in the state prison not exceeding five (5) years or in a county jail not exceeding six (6) months; and it is presumptive evidence that such property was stolen if the same consists of jewelry, silver or plated ware or articles of personal ornaments, brass, bronze or copper fixtures, fittings or parts of machinery, or electrical supplies, or what is commonly termed junk, if purchased or received from a person under the age of eighteen (18) years unless said property is sold by said minor at a fixed place of business carried on by said minor or his employer.

The jurisdiction of a criminal action for receiving stolen property is in any county wherein said property was received or into or through which such stolen property has been brought.

History: En. Sec. 899, Pen. C. 1895; re-en. Sec. 8862, Rev. C. 1907; amd. Sec. 1, ch. 137, L. 1915; re-en. Sec. 11388, R C. M. 1921; amd. Sec. 1, Ch. 30, L. 1931; amd. Sec. 34, Ch. 94, L. 1973. Cal. Pen. C. Sec. 496.

Amendments

The 1973 amendment reduced the age specified in the final clause of the first paragraph from twenty-one to eighteen years.

Constitutionality

This section was not unconstitutional in delegating to prosecuting attorney discretion to charge persons with either misdemeanor or felony, since this section provides that person must be charged with felony and it is then within sound discre-

tion of court, after conviction, to determine punishment. Petition of Gibson, 153 M 454, 457 P 2d 767.

Burden of Proof

State need not prove theft by someone other than defendant to establish violation of this section. State v. Watkins, 156 M 456, 481 P 2d 689, overruling State v. Gilbert, 126 M 171, 246 P 2d 814.

CHAPTER 31—MACHINE GUN ACT

94-3108. (11317.8) Registration of machine guns, etc.

Cross-References

Functions of secretary of state transferred to department of law enforcement and public safety, sec. 82A-1203(3).

CHAPTER 33—MALICIOUS MISCHIEF GENERALLY

Section
94-3335. Legislative intent to prevent littering.
94-3336. Littering public or private properties unlawful—exceptions.
94-3337. Litter defined.
94-3338. Public or private property defined.
94-3339. Penalties.
94-3340. Prima facie violation by operators of conveyances.
94-3341. Who authorized to enforce act.
94-3342. Public authorities to maintain receptacles in public places.
94-3343. Short title.
94-3344. Notices of act and penalties posted on highways.

94-3335. Legislative intent to prevent littering. It is the intention of the legislature by this act to provide for uniform prohibition throughout the state of any and all littering on public and private property, and to curb thereby the desecration of the beauty of the state and harm to health, welfare and safety of its citizens caused by individuals who litter.

History: En. Sec. 1, Ch. 323, L. 1971.

Title of Act

An act to define, control and prohibit the littering of public and private property, providing a penalty therefor, and repealing sections 32-1629, 32-1629.1, 32-1630 and 32-1631, R. C. M. 1947.

94-3336. Littering public or private properties unlawful—exceptions. It is unlawful for any person or persons to dump, deposit, throw or leave, or to cause or permit dumping, depositing, placing, throwing, or leaving of litter on any public or private property in this state, or any waters in this state, unless:

(1) Such property is designated by the state or by any of its agencies or political subdivisions for the disposal of such material, and such person is authorized by the proper public authority to use such property;

(2) Into a litter receptacle or container installed on such property;

(3) He is the owner or tenant in lawful possession of such property, or has first obtained consent of the owner or tenant in lawful possession, or unless the act is done under the personal direction of said tenant or owner.

History: En. Sec. 2, Ch. 323, L. 1971.

94-3337. Litter defined. The term "litter" as used herein shall mean all rubbish, waste material, refuse, garbage, trash, debris or other foreign

substances of every kind and description, including abandoned motor vehicles.

History: En. Sec. 3, Ch. 323, L. 1971.

94-3338. Public or private property defined. The phrase "public or private property" as used herein shall include, but not be limited to, the right of way of any road or highway; any body of water or watercourse or the shores or beaches thereof; any park, playground, building, refuge or conservation or recreation area, and any residential or farm properties or timberlands.

History: En. Sec. 4, Ch. 323, L. 1971.

94-3339. Penalties. Any person violating the provisions of section 94-3336 of this act is guilty of a misdemeanor, subject to a minimum fine of twenty-five dollars ($25) or imprisonment, or both, as in the case of misdemeanors, and, in lieu thereof, in the sound discretion of any court in which conviction is obtained, may be directed by the judge to pick up and remove from any public street or highway or public and private right of way, or public beach or public park, or, with prior permission of the legal owner or tenant in lawful possession of such property, any private property upon which it has been established by competent evidence that he has deposited litter, any and all litter deposited thereon by anyone prior to the date of execution of sentence.

History: En. Sec. 5, Ch. 323, L. 1971; amd. Sec. 1, Ch. 480, L. 1973.

Amendments

The 1973 amendment increased the minimum fine from $10 to $25; and made a minor change in style.

94-3340. Prima facie violation by operators of conveyances. Whenever litter is thrown, deposited, dropped or dumped from any motor vehicle, boat, airplane or other conveyance in violation of section 2 [94-3336] hereof, the operator of said conveyance shall be deemed prima facie to have violated this act.

History: En. Sec. 6, Ch. 323, L. 1971.

94-3341. Who authorized to enforce act. All law enforcement agencies, officers and officials of this state or any political subdivision thereof, or any enforcement agency, officer or any official of any commission of this state or any political subdivision thereof, are hereby authorized, empowered and directed to enforce compliance with this act.

History: En. Sec. 7, Ch. 323, L. 1971.

94-3342. Public authorities to maintain receptacles in public places. All public authorities having supervision of properties of this state are authorized, empowered and instructed to establish and maintain receptacles for the deposit of litter at appropriate locations where such property is frequented by the public, and to post signs directing persons to otherwise publicize the availability of litter receptacles and requirements of this act.

History: En. Sec. 8, Ch. 323, L. 1971.

94-3343. Short title. This act shall be known as the litter control law.

History: En. Sec. 9, Ch. 323, L. 1971.

94-3344. Notices of act and penalties posted on highways. It is the duty of the state highway commission to post notices of this act, and the penalties provided for, on the state and interstate highways at locations to be designated by the state highway commission.

History: En. Sec. 11, Ch. 323, L. 1971.

Separability Clause

Section 10 of Ch. 323, Laws 1971 read "If any provision of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is unaffected."

Repealing Clause

Section 12 of Ch. 323, Laws 1971 read "Sections 32-1629, 32-1629.1, 32-1630 and 32-1631, R. C. M. 1947, are hereby repealed."

CHAPTER 35—MISCELLANEOUS OFFENSES

Section

94-3522 [Transferred.]
94-3527. Carrying certain concealed weapons forbidden—punishment—who excepted from act.
94-3552.1. Use of junked motor vehicles in streams unlawful.
94-3552.2. Penalty for use of junked motor vehicles in streams.
94-3555. [Transferred.]
94-3567 to 94-3569. [Transferred.]
94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of eighteen years.
94-35-106.2. Possession of beer or liquor by minor—misdemeanor.
94-35-109. [Transferred.]
94-35-172 to 94-35-174. [Transferred.]
94-35-200. [Transferred.]
94-35-203 to 94-35-207. [Transferred.]
94-35-249. Vending or coin-operated machines—operation with counterfeit slugs, etc., forbidden.
94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty.
94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor.
94-35-270 to 94-35-271.3. [Transferred.]

94-3504. (11211) Altering brands.

Unauthorized Brand

An unauthorized brand or mark does not have to touch, alter or deface a former brand on an animal to be in violation of this section. State v. Johnson, 155 M 351, 472 P 2d 287.

94-3522. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 46-1720.

94-3525. (11302) Carrying certain concealed weapons, etc.

Permit

Instructing jury in assault prosecution that it was crime to carry a concealed weapon without a permit was not error even though there was no evidence that defendant did not have a permit. State v. Lewis, 157 M 452, 486 P 2d 863.

94-3527. (11304) **Carrying certain concealed weapons forbidden—punishment—who excepted from act.** The preceding sections shall not apply to:

1. to 15. * * * [Same as parent volume.]

16. United States immigration and naturalization service officer;

17. National park service rangers.

History: En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R. C. M. 1921; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971.

Amendments

The 1971 amendment added item 17, relating to national park service rangers.

94-3552.1. Use of junked motor vehicles in streams unlawful. It is unlawful to place junked motor vehicles, or the body portion of junked motor vehicles, between high-water channel banks of any stream or to reinforce banks of a stream.

History: En. Sec. 1, Ch. 319, L. 1971.

Title of Act

An act making it unlawful to use junked motor vehicles for flood control of a stream or for reinforcement of the banks of a stream.

94-3552.2. Penalty for use of junked motor vehicles in streams. Any person who violates the provisions of this act is guilty of a misdemeanor and upon conviction shall be fined not to exceed two hundred and fifty dollars ($250), imprisoned in the county jail for any term not to exceed thirty (30) days, or both.

History: En. Sec. 2, Ch. 319, L. 1971.

94-3555. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 41-1325.

94-3557. (11577) **Discrimination by hospitals forbidden.**

Regulatory Powers of Hospital

This section merely provides that one set of rules shall apply to all doctors to prevent discrimination but does not remove any duty that the hospital may have to regulate its staff members through hospital bylaws, standards and regulations which define the duty or standard of care owed to patient. Hull v. North Valley Hospital, — M —, 498 P 2d 136.

94-3567 to 94-3569. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 46-3001 to 46-3003.

94-35-105. (11280) **Inspection of mines, etc.**

Compiler's Notes

Sections 50-103 to 50-107 and 50-109 to 50-114, contained in the reference to sections 50-101 to 50-114 in this section, were repealed by Sec. 6, Ch. 310, Laws 1971.

94-35-106. Intoxicating liquors—penalty for giving or selling to any person under the age of eighteen (18) years. Any person who shall sell, give away or dispose of intoxicating liquor to any persons under the age

of eighteen (18) years, shall for the first offense be subject to punishment not exceeding five hundred dollars ($500) fine or by imprisonment not to exceed six (6) months in the county jail, or both such fine and imprisonment, and upon conviction for the second and subsequent offenses he shall be subject to punishment by fine of not less than five hundred dollars ($500) nor more than two thousand dollars ($2,000) or by imprisonment in the state penitentiary for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment. Nothing herein contained shall prevent the furnishing of intoxicating liquor to a person under eighteen (18) years of age upon any physician's prescription where authorized by the laws of this state or the United States, nor the furnishing of wine for sacramental purposes.

History: En. Sec. 1, Ch. 143, L. 1949; amd. Sec. 22, Ch. 240, L. 1971; amd. Sec. 36, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years in two instances; and made minor changes in style.

The 1973 amendment reduced the specified age from nineteen to eighteen years in two places.

94-35-106.2. Possession of beer or liquor by minor—misdemeanor. Any person who shall not have reached the age of eighteen (18) years and who shall have in his or her possession beer or liquor, shall be guilty of a misdemeanor.

History: En. Sec. 1, Ch. 125, L. 1957; amd. Sec. 23, Ch. 240, L. 1971; amd. Sec. 37, Ch. 94, L. 1973.

Amendments

The 1971 amendment reduced the specified age from 21 to 19 years.

The 1973 amendment reduced the specified age from nineteen to eighteen years.

94-35-109. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 72-671.

94-35-138. (11039.1) **Repealed.**

Repeal

Section 94-35-138 (Sec. 1, Ch. 49, L. 1927), relating to minors frequenting public dance halls, was repealed by Sec. 1, Ch. 114, Laws 1971.

94-35-172 to 94-35-174. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered secs. 94-35-172 and 94-35-173 as secs. 46-247 and 46-248. It also renumbered sec. 94-35-174 as sec. 72-507.

94-35-200. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 46-3004.

94-35-203. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 72-672.

94-35-204 to 94-35-207. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 46-3005 to 46-3008.

94-35-212. (11196) Steam boilers—operating without license, etc.

Compiler's Notes

Section 69-1518, referred to in this section, was repealed by Sec. 24, Ch. 225, Laws 1971.

94-35-248. (11521) Vagrants.

Constitutionality

Statute reading "rogues and vagabonds, or dissolute persons who go about begging, common gamblers, persons who use juggling or unlawful games or plays, common drunkards, common nightwalkers, thieves, pilferers or pickpockets, traders in stolen property, lewd, wanton and lascivious persons, keepers of gambling places, common railers and brawlers, persons wandering or strolling about from place to place without any lawful purpose or object, habitual loafers, disorderly persons, persons neglecting all lawful business and habitually spending their time by frequenting houses of ill fame, gaming houses, or places where alcoholic beverages are sold or served, persons able to work but habitually living upon the earnings of their wives or minor children shall be deemed vagrants . . ." is void for vagueness in that it encourages arbitrary and erratic arrests and convictions, makes criminal activities of normally innocent activities, places almost unfettered discretion in the hands of the police, and fails to give the person of ordinary intelligence fair notice that his contemplated conduct is forbidden by statute. Papachristou v. City of Jacksonville, 405 U S 156, 31 L Ed 2d 110, 92 S Ct 839.

94-35-249. Vending or coin-operated machines—operation with counterfeit slugs, etc., forbidden. Any person who, by means of any token, slug, false or counterfeited coin, or by any other means, method, trick or device whatsoever not lawfully authorized by the owner, lessee, or licensee of any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America in furtherance of or connection with the sale, use or enjoyment of property or service, knowingly shall operate or cause to be operated, or shall attempt to operate or attempt to cause to be operated, any lawful vending machine, coin-box telephone or other receptacle designed to receive or be operated by lawful coin of the United States of America, or whoever shall take, obtain, accept or receive, from or by means of any such machine, coin-box telephone or other receptacle, any article of value of service or the use or enjoyment of any telephone, telegraph or other facility or service, without depositing in, delivering to and payment into such machine, coin-box telephone or receptacle the amount of lawful coin of the United States of America required therefor by the owner, lessee or licensee of such machine, coin-box telephone or other receptacle, and any person who possesses, with the intent to commit larceny, a key or device specifically designed to open or break any parking meter, coin telephone, or other vending machines dispensing goods or services, shall be fined not more than two hundred dollars ($200.00), or imprisoned not more than sixty (60) days, or both.

History: En. Sec. 1, Ch. 83, L. 1945; amd. Sec. 1, Ch. 172, L. 1971.

Amendments

The 1971 amendment inserted "and any person who possesses, with the intent to commit larceny, a key or device specifically designed to open or break any parking meter, coin telephone, or other vending machines dispensing goods or services" near the end of the section.

94-35-260. State tax stamps—failure to affix or cancel—removal—penalty—counterfeiting tax stamp or insignia of Montana or other state—penalty. (a) Every person required by law to affix any tax stamp or insignia of the state of Montana, to or upon any article to evidence the payment of a tax or license thereon, who shall fail, neglect or refuse to affix such stamp or insignia thereto, or to affix it in the proper place, or to cancel it, in the manner and as required by law, or as required by rules and regulations of the state department of revenue of this state when charged with administering any act relating thereto, or who shall willfully remove any such affixed stamp or insignia from any such article and affix it to another such article required by law to be so stamped or marked, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not less than thirty (30) days, nor more than six (6) months, or by a fine of not less than one hundred dollars ($100.00), nor more than three hundred dollars ($300.00), or by both such fine and imprisonment.

(b). * * * [Same as parent volume.]

History: En. Sec. 1, Ch. 43, L. 1949; amd. Sec. 112, Ch. 391, L. 1973.

Amendments

The 1973 amendment substituted "department of revenue" for "board of equalization" in subsection (a).

Repealing Clause

Section 113 of Ch. 391, Laws 1973 read "Sections 16-1016, 16-3703, and 91-4466, R. C. M. 1947, are repealed."

94-35-269. Hunting in careless or reckless manner—failure to assist person injured or wounded—misdemeanor. (1) Any person who, in the act of pursuing, taking or killing wildlife, shall act in a careless or reckless manner, or with wanton disregard of human life or property, or who knowingly fails to give all reasonable assistance to any person whom he has injured or wounded, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and upon conviction thereof, be punished as provided by law.

(2) Any such person convicted of injuring, wounding, or killing any person shall lose all hunting privileges and licenses for a period of twenty (20) years unless assistance is rendered to the injured or wounded person and the incident duly reported. Such person shall be responsible for and bear all costs and expenses incurred by the state or any county in the rescue or removal of a wounded or dead person whom he injured or killed, as provided in subsection (1) above.

History: En. Sec. 1, Ch. 189, L. 1955; amd. Sec. 1, Ch. 346, L. 1971.

Amendments

The 1971 amendment designated the former language as subsection (1); substituted "wildlife" for "game animals or game birds" near the beginning of subsection (1); and added subsection (2).

94-35-270 to 94-35-271.3. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 3-234 to 3-238.

CHAPTER 36—OBSCENITY—LITERATURE—INDECENT EXPOSURE—HOUSES OF ILL FAME—PROHIBITION OF CERTAIN ADVERTISEMENTS

Section
94-3620. Contraceptive drugs or devices—methods of sale and distribution prohibited.
94-3621. Advertising of prophylactics, contraceptives prohibited—exceptions.
94-3622. Seizure of illegal stock.
94-3623. Penalty for violation.
94-3624. Public display of offensive sexual material—definition.
94-3625. Theater previews.
94-3626. Violation.

94-3616 to 94-3619. (11148.1 to 11148.4) **Repealed.**

Repeal

Sections 94-3616 to 94-3619 (Secs. 1 to 4, Ch. 134, L. 1935), prohibiting advertising and limiting methods of sales of contraceptive devices, was repealed by Sec. 5, Ch. 430, Laws 1973 and Sec. 32, Ch. 513, Laws 1973. For new law, see secs. 94-3620 to 94-3623.

94-3620. Contraceptive drugs or devices—methods of sale and distribution prohibited. It shall be unlawful for any person, firm, corporation, copartnership or association to sell, offer for sale, give away, through the medium of vending machines, personal or collective distribution, by solicitation, peddling or in any other manner whatsoever contraceptive drugs or devices, prophylactic rubber goods or other articles for the prevention of venereal diseases. The foregoing provisions shall not apply to regularly licensed practitioners of medicine, osteopathy or other licensed persons practicing other healing arts, and registered pharmacists, nor to wholesale drug jobbers or manufacturers who sell to retail stores only.

History: En. Sec. 1, Ch. 430, L. 1973.

Compiler's Notes

The title of Ch. 430, Laws 1973, referred to codification of this act in chapter 15, Title 66. However, the body of the act contained no such direction. The act appears properly to be part of Title 94 since it replaces sections 94-3616 to 94-3619, since it has broader application than to pharmacies and similar businesses, and since enforcement responsibility is placed in law enforcement officers generally rather than in the board of pharmacy.

Title of Act

An act to be codified in chapter 15, Title 66, R. C. M. 1947, relating to the sale and advertisement of contraceptive drugs and devices; providing penalties; and repealing sections 94-3616, 94-3617, 94-3618 and 94-3619, R. C. M. 1947.

94-3621. Advertising of prophylactics, contraceptives prohibited—exceptions. It shall be unlawful to exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist, or to advertise such in any magazine, newspaper or other form of publication, originating in, or published within the state of Montana; to publish, or distribute from house to house or upon the streets, any circular, booklet or other form of advertising, or by other visual means, or by auditory method or by radio broadcast; or by the use of outside signs on stores, billboards, window displays or other advertising visible to persons upon the streets or public highways; provided, however, that nothing in this act shall prevent the advertising of prophylactics or contraceptives in the trade press of those magazines whose principal circulation is to the medical and pharmaceutical professions; or to those magazines and other publications having interstate circulation, originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation; nor to the furnishing within the store or place of business of a licensed pharmacist, to persons qualified to purchase, and then

only upon their inquiry, such printed or other information as in requisite to proper use in relation to any merchandise coming within the provisions of this act.

Provided, nothing herein shall prevent the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this act.

History: En. Sec. 2, Ch. 430, L. 1973.

94-3622. Seizure of illegal stock. Any officer of the law shall have the power to cause the arrest of any person violating any provision of this act, to seize stocks illegally held, and to make seizure of any mechanical device or vending machine containing any merchandise coming within the provisions of this act, holding the owner of such machine, the occupier and the owner of the premises where seizure is made to be in violation of this act.

History: En. Sec. 3, Ch. 430, L. 1973.

94-3623. Penalty for violation. Any person, or any member of a firm, or copartnership or the officers of a corporation or association who or which knowingly violates any of the provisions of this act shall be guilty of a misdemeanor, and shall, upon conviction, be punished by a fine not to exceed five hundred dollars ($500), or by imprisonment of not to exceed six (6) months in the county jail, or both; provided, however, that the justice of the peace courts and the district courts of the state shall have concurrent jurisdiction in all prosecutions and causes arising under this act.

History: En. Sec. 4, Ch. 430, L. 1973.

"Sections 94-3616, 94-3617, 94-3618 and 94-3619, R. C. M. 1947, are repealed."

Repealing Clause

Section 5 of Ch. 430, Laws 1973 read

94-3624. Public display of offensive sexual material—definition. A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, drive-in movie screen, marquee or similar place, in such manner that the display is easily visible from or in any public street, sidewalk, or thoroughfare or transportation facility, any pictorial, three-dimensional or other visual representation of a person or a portion thereof of the human body that predominantly appeals to prurient interest in sex, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors.

History: En. Sec. 1, Ch. 463, L. 1973.

offensive sexual material, with definition of terms; and providing for a penalty.

Title of Act

An act prohibiting the public display of

94-3625. Theater previews. A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual material and if minors are permitted to attend the showing of the motion picture then being featured.

History: En. Sec. 2, Ch. 463, L. 1973.

94-3626. Violation. A person convicted of the public display of offensive sexual material shall be fined not to exceed five hundred dollars ($500) or imprisoned in the county jail for a term not to exceed six (6) months, or both.

History: En. Sec. 3, Ch. 463, L. 1973.

Separability Clause

Section 4 of Ch. 463, Laws 1973 read "It is the intent of the legislature that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application."

CHAPTER 37—PAWNBROKERS—PROHIBITIONS

Section
94-3702. Failure to keep register.

94-3702. (11185) **Failure to keep register.** Every person who carries on the business of a pawnbroker, dealer in secondhand goods, or junk dealer who fails at the time of the transaction to enter in a register kept by him for that purpose, in the English language, the date, duration, amount, and rate of interest of every loan made by him, or an accurate description of the property pledged or sold to him or by him, or the name and residence of the pledger or seller or purchaser, or to deliver to the pledger or seller or purchaser a written copy of such entry, or to keep an account in writing of all sales or purchases made by him, and every pawnbroker, dealer in secondhand goods, or junk dealer who receives goods in pledge or by gift, or purchases the same from any person under the age of eighteen (18) years, or from anybody acting as agent for said person, shall be deemed guilty of a misdemeanor, and a conviction thereof shall also work a forfeiture of his license.

History: En. Sec. 621, Pen. C. 1895; re-en. Sec. 621, Ch. 54, L. 1903; re-en. Sec. 8438, Rev. C. 1907; re-en. Sec. 11185, R. C. M. 1921; amd. Sec. 35, Ch. 94, L. 1973. Cal. Pen. C. Sec. 339.

Amendments

The 1973 amendment reduced the age specified in the latter part of the section from twenty-one to eighteen years.

CHAPTER 40—POOL HALLS—BILLIARD HALLS—BOWLING ALLEYS—PROHIBITIONS GOVERNING

94-4001. (11188) **Conducting certain pool games a misdemeanor.** Any owner, proprietor, manager, or employee who permits, or any person who carries on, or conducts, or causes to be conducted or runs, as principal, agent, or employee, any game of pea pool, pay pool, Kelly pool, or any other game of chance, science, or skill, played upon any pooltable or upon any billiard-table, for money, checks, credits, or any representative of value, shall be deemed to be guilty of a misdemeanor and punished as provided in this act.

Compiler's Notes

This section is reprinted herein to correct a typographical error in the parent volume.

CHAPTER 41—RAPE AND OTHER SEXUAL CRIMES

94-4101. (11000) **Rape defined.**

Jury Instructions

Instruction in rape case which intimated to jury that impact of guilty verdict could be lessened by court's imposition of light

sentence was prejudicial to defendant, since punishment should not be a concern to jury in determining defendant's guilt or innocence. State v. Zuidema, 157 M 367, 485 P 2d 952, overruling State v. Metcalf, 153 M 369, 457 P 2d 453.

Physical Resistance

Physical resistance by prosecutrix was not necessary element of rape where evidence supported conviction under subsec. (4) of this section, which simply requires that there be threats of immediate and great bodily harm, accompanied by apparent power of execution. State v. Metcalf, 153 M 369, 457 P 2d 453.

Statutory Rape

Prima facie case of statutory rape was established by testimony of rape victim on cross- and redirect examination that defendant had committed an act of sexual intercourse with her. State v. Anderson, 156 M 122, 476 P 2d 780.

Sufficiency of Evidence

Evidence that included victim's testimony corroborated by medical evidence was sufficient to support jury conviction of statutory rape. State v. Anderson, 156 M 122, 476 P 2d 780.

94-4103. (11002) Penetration sufficient.

Jury Instructions

Adding of sentence, "Proof of emission is not necessary," to this section and using such language as part of charge to jury in rape case did not constitute error. State v. Bouldin, 153 M 276, 456 P 2d 830.

94-4106. (11005) Lewd and lascivious acts upon children.

Constitutionality

Sentence imposed under this section was not subject to attack on ground that it represented cruel and unusual punishment, and contention that this section is vague and without standards was without merit. State v. Jensen, 153 M 489, 458 P 2d 782.

Admission of Testimony

Where defendant was charged with violation of this section, it was not error for trial court to admit testimony of other women concerning similar improper acts committed by defendant since such testimony showed continuous pattern of behavior on part of defendant. State v. Jensen, 153 M 233, 455 P 2d 631.

CHAPTER 42—RESCUES AND ESCAPES

Section
94-4203. Escapes from state prison—punishment.
94-4209. [Transferred.]

94-4203. (10866) Escapes from state prison—punishment. Every prisoner confined in state prison for a term less than for life, who escapes therefrom, is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the time he would have otherwise been discharged from said prison. A prisoner is deemed to be "confined in state prison" within the meaning of this section if he is under the jurisdiction of the prison authorities even though he might be outside of the prison confines.

History: En. Sec. 220, Pen. C. 1895; re-en. Sec. 8222, Rev. C. 1907; re-en. Sec. 10866, R. C. M. 1921; amd. Sec. 1, Ch. 16, L. 1973. Cal. Pen. C. Sec. 105.

Amendments

The 1973 amendment added the second sentence.

94-4207. (10870) Assisting prisoner to escape.

Attempt

This section applies to an attempt to escape but section 92-4208 applies where there has been an actual escape. State v. Zuidema, 157 M 367, 485 P 2d 952.

Burden of Proof

State need not prove that prisoners are lawfully in jail to bring prosecution under this section. State v. Zuidema, 157 M 367, 485 P 2d 952.

94-4208. (10871) Carrying into prison things useful to aid in an escape.

Attempt

This section applies when there has been an actual escape but section 94-4207 applies to an attempt to escape. State v. Zuidema, 157 M 367, 485 P 2d 952.

Burden of Proof

State need not prove that prisoners are lawfully in jail to bring prosecution under this section. State v. Zuidema, 157 M 367, 485 P 2d 952.

94-4209. [Transferred.]

Compiler's Notes

Section 27, Ch. 513, Laws of 1973, amended and renumbered this section as sec. 80-1912. Supplementary materials relating to this section may be found under that number in the current supplement to Volume Five, Part One.

CHAPTER 43—ROBBERY

94-4303. (10975) Punishment of robbery.

Maximum Punishment

Since there is no maximum penalty stated in this section it is presumed that person may be incarcerated for lifetime on conviction of robbery. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.

Sentence of ten years' imprisonment for robbery was not in excess of that allowable by statute due to operation of section 94-115 since punishment for conviction of robbery is specifically provided for by this section, and section 94-115 only provides penalties for crimes not otherwise provided for in statutes. Petition of O'Rourke, 154 M 265, 461 P 2d 1.

CHAPTER 47—PUNISHMENTS—ATTEMPTS AND OTHER GENERAL PROVISIONS

94-4713. (11593) Second offense, how punished, etc.

Harmless Admission

Where defendant admitted during trial that he had been previously convicted of felony, sentence of five years indicated that testimony of prior conviction did not enhance punishment since under this section he would have received minimum sentence of ten years. Petition of Gallagher, 153 M 440, 456 P 2d 306.

Void Conviction

Where defendant was denied due process during arraignment for prior conviction, trial court improperly sentenced defendant pursuant to this section since prior felony conviction was null and void. Lewis v. State, 153 M 460, 457 P 2d 765.

94-4725. (11605) Forfeitures.

Inheritance by Slayer from Decedent

Despite this section, wife who unlawfully killed husband could not take from his estate by dower or intestate succession, nor take his share in jointly owned property, but rather she became constructive trustee for other beneficiaries and devisees. Sikora v. Sikora, — M —, 499 P 2d 808.

CHAPTER 48—RIGHTS OF DEFENDANT

94-4806. (11611) Rights of defendant in a criminal action.

Impartial Jury

Refusal of trial court to permit voir dire examination of prospective jurors on subjects related to insanity defense for which defendant had given notice, and denial to defendant of opportunity to make opening statement until after presentation of prosecution's case constituted improper interference with defendant's right to have jury consider his defense. State v. Olson, 156 M 339, 480 P 2d 822.

CHAPTER 54—IMPEACHMENT

Section
94-5401 to 94-5417. [Transferred.]
94-5419. [Transferred.]

94-5401 to 94-5417. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-2801 to 95-2817. Supplementary materials relating to these sections may be found in this supplement as follows:

Old Sec.	New Sec.
94-5401	95-2801
94-5402	95-2802

94-5418. (11685) Repealed.

Repeal

Section 94-5418 (Sec. 1517, Pen. C. 1895), relating to notice to the senate of impeachment of the lieutenant governor, was repealed by Sec. 6, Ch. 297, Laws 1973. Under the 1972 constitution, the lieutenant governor no longer holds the position of president of the senate.

94-5419. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 95-2819.

CHAPTER 55—REMOVAL OF OFFICERS OTHERWISE THAN BY IMPEACHMENT

94-5516. (11702) Removal of public officers by summary proceedings.

Intent

Willfulness must be alleged and proved to remove an officer summarily pursuant to this section. State ex rel. Arnot v. District Court of First Judicial District In and For County of Lewis and Clark, 155 M 344, 472 P 2d 302.

CHAPTER 68—PLEAS

94-6808.1. Definition of terms.

Double Jeopardy

Defendant's conviction of driving while intoxicated and operating a motor vehicle with improper brakes did not bar a subsequent prosecution for involuntary manslaughter. State v. McDonald, 158 M 307, 491 P 2d 711.

94-6808.3. When prosecution barred by former prosecution.

Information

Information that did not particularize the charge against defendant was not fatally defective, since under this section prosecution for same transaction that resulted in earlier conviction is expressly barred. State v. Dunn, 155 M 319, 472 P 2d 288.

CHAPTER 72—THE TRIAL

Section
94-7203, 94-7204. [Transferred.]
94-7206, 94-7207. [Transferred.]
94-7209, 94-7210. [Transferred.]

94-7203, 94-7204. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-2901 and 95-2902. Supplementary materials relating to sec. 94-7203 may be found in this supplement under sec. 95-2901.

94-7206, 94-7207. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-1504(d) and (e).

94-7209, 94-7210. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-3001 and 95-3002.

94-7220. (11988) Conviction on testimony of accomplice.

Sufficiency of Corroborative Evidence

Testimony of accomplice to burglary was sufficiently corroborated by evidence that defendant owned car involved in burglary, had attended same party with other principals in burglary, was with other principals in grocery earlier on day of burglary, and admitted being in house where stolen property was discovered and knew it was there. State v. Dess, 154 M 231, 462 P 2d 186.

Witness as Accomplice

Witness who was serving last two days of thirty-day sentence was not an accomplice where he neither acted voluntarily nor had any common intent with principals in attempted jail break; thus it was not necessary that his testimony be corroborated. State v. Zuidema, 157 M 367, 485 P 2d 952.

CHAPTER 79—UNIFORM ACT FOR OUT-OF-STATE PAROLEE SUPERVISION

Section
94-7901, 94-7902. [Transferred.]

94-7901, 94-7902. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as 95-3201 and 95-3202. Supplementary materials relating to sec. 94-7901 may be found in this supplement under sec. 95-3201.

CHAPTER 88—WHO MAY BE WITNESSES IN CRIMINAL ACTIONS

Section
94-8801, 94-8802. [Transferred.]

94-8801, 94-8802. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-3010 and 95-3011.

94-8803. (12177) When the defendant is not a competent witness, etc.

Jury Instruction

Instruction to jury which stated that failure of defendant to explain his possession of stolen property pointed to his guilt did not amount to forbidden comment on defendant's failure to testify since such explanation could have been given by defendant, by having another person testify, or by introducing real evidence. State v. Branch, 155 M 22, 465 P 2d 821.

Privilege Against Self-Incrimination

Conviction of petty larceny was reversed and new trial granted where prosecutor in final argument to jury made comment to jury which could only be construed as reflecting prejudicially on defendant's failure to take stand and testify. State v. Hart, 154 M 310, 462 P 2d 885.

Prosecutor's statement to jury on voir dire that rape case has only two witnesses, the people involved, and that jury must weigh their respective testimony if defendant chooses to testify, did not prejudice defendant's case by compelling him to testify contrary to his rights under this section. State v. Anderson, 156 M 122, 476 P 2d 780.

CHAPTER 90—WITNESSES FROM WITHOUT STATE—HOW SECURED IN CRIMINAL PROCEEDINGS

Section
94-9002 to 94-9004. [Transferred.]

94-9002 to 94-9004. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-1809 to 95-1811.

CHAPTER 98—PROBATION, PAROLE AND CLEMENCY

Section
94-9821 to 94-9851. [Transferred.]

94-9821 to 94-9851. [Transferred.]

Compiler's Notes

Sections 28 and 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-3203 to 95-3233. Supplementary materials relating to these sections may be found in this supplement as follows:

Old Sec.	New Sec.
94-9822	95-3204
94-9823	95-3205
94-9825	95-3207
94-9831	95-3213
94-9835	95-3217
94-9838	95-3220
94-9841	95-3223
94-9842	95-3224
94-9846	95-3228

CHAPTER 501—UNIFORM CRIMINAL EXTRADITION ACT

94-501-20. Guilt or innocence of accused, when inquired into.

Presence in Demanding State

This section does not prevent inquiry in habeas corpus proceedings brought by the accused as to whether the accused was even in the demanding state at the time of the offense, and accused should have been allowed to introduce evidence that he was not. State ex rel. Hart v. District Court, 157 M 287, 485 P 2d 698.

CHAPTER 701—PRISONER'S ATTENDANCE AT COURT—HOW OBTAINED

Section
94-701-1. [Transferred.]

94-701-1. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered this section as sec. 95-1812.

CHAPTER 801—FINES AND FORFEITURES—DISPOSAL OF

94-801-2. Traffic fines collected from juvenile offenders—disposition.

Compiler's Notes

Section 75-5304, referred to twice in this section, was repealed by Sec. 12, Ch. 214, Laws of 1969. For present law, see section 75-7903.

CHAPTER 1101—INTERSTATE AGREEMENT ON DETAINERS

Section
94-1101-1 to 94-1101-6. [Transferred.]

94-1101-1 to 94-1101-6. [Transferred.]

Compiler's Notes

Section 29, Ch. 513, Laws of 1973, renumbered these sections as secs. 95-3131 to 95-3136.

TITLE 95—MONTANA CODE OF CRIMINAL PROCEDURE

Chapter.
5. Competency of accused, 95-506, 95-508.
6. Arrest, 95-618.
7. Search and seizure, 95-719.
10. Right to counsel, 95-1005.
14. Grand jury, 95-1401, 95-1402, 95-1410.
15. Charging an offense, 95-1504, 95-1507.
17. Pretrial motions, 95-1703, 95-1711.
18. Production and suppression of evidence, 95-1807, 95-1808.
19. Trial in district court, 95-1901, 95-1915.
20. Justice and police court proceedings, 95-2006, 95-2007.
22. Sentence and judgment, 95-2206 to 95-2206.4, 95-2227 to 95-2229.
28. Impeachment, 95-2801, 95-2802.
30. Evidence, 95-3004, 95-3012.
31. Uniform Criminal Extradition Act, 95-3101 to 95-3130.
32. Probation, parole and clemency, 95-3202.1 to 95-3202.4, 95-3205, 95-3220, 95-3223, 95-3224, 95-3228.

CHAPTER 1—SCOPE, PURPOSE, CONSTRUCTION AND RULES

Section
95-103 to 95-108. [Transferred.]

95-103 to 95-108. [Transferred.]

Compiler's Notes

The compiler originally designated these sections as secs. 95-2801 to 95-2806. However, Chapter 513, Laws of 1973, transferred certain other sections from Title 94 to appear as sections 95-2801 to 95-2819. In order to avoid confusion, the compiler has transferred these sections to appear as secs. 95-103 to 95-108. Since there has been no change in text, these sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-103	95-2801
95-104	95-2802
95-105	95-2803
95-106	95-2804
95-107	95-2805
95-108	95-2806

CHAPTER 2—DEFINITIONS

95-210. Peace officer.

Cross-References

Certain employees of state highway commission as peace officers, secs. 32-1632 to 32-1641.

Members of Montana university system security department as peace officers, sec. 75-8513.

CHAPTER 5—COMPETENCY OF ACCUSED

Section
95-506. Determination of fitness to proceed—effect of finding of unfitness—proceedings of fitness is regained—expenses.
95-508. Legal effect of acquittal on the ground of mental disease or defect excluding responsibility—hearing—commitment—release or discharge.

95-503. Mental disease or defect excluding responsibility, etc.

Burden of Proof

State was not obliged to present proof of defendant's sanity in rape prosecution. State v. Olson, 156 M 339, 480 P 2d 822.

95-506. Determination of fitness to proceed—effect of finding of unfitness—proceedings if fitness is regained—expenses. (a) to (c). * * * [Same as parent volume.]

(d) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973.

Amendments

The 1973 amendment added subsection (d).

95-507. Determination of irresponsibility on basis of report, etc.

Severance of Trial on Sanity

Denial of defendant's motion for severance for trial of the issues of defendant's guilt or innocence and his sanity was proper since this section and section 95-508 provide for those matters to be presented at same trial and to same jury. State v. Olson, 156 M 339, 480 P 2d 822.

95-508. Legal effect of acquittal on the ground of mental disease or defect excluding responsibility—hearing—commitment—release or discharge. (a) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment. A person so confined shall have a hearing, unless waived, within fifty (50) days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released. According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary, or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.

(b). * * * [Same as parent volume.]

(c) If the court is satisfied by the report filed pursuant to subsection (b) of this section, and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According

to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (b) and (c).

(d) If, within five (5) years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections (b) and (c).

(e). * * * [Same as parent volume.]

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973.

Amendments

The 1973 amendment added the second, third, fourth and fifth sentences to subsection (a); inserted "by a preponderance of the evidence" in the fourth sentence of subdivision (c); and substituted "in subsections (b) and (c)" for "for a first hearing" at the end of subsections (c) and (d).

DECISIONS UNDER FORMER LAW

Burden of Proof

For release of persons committed to state hospital under this section it must be established by evidence convincing beyond a reasonable doubt that release can be effected without danger to the public. State v. Taylor, 158 M 323, 491 P 2d 877 (Decision prior to 1973 amendment).

Psychiatrists' Statement

Habeas corpus petition by person committed under this section requires statement by two psychiatrists before it may be considered. Petition of Brown, — M —, 497 P 2d 1038 (Decision prior to 1973 amendment).

CHAPTER 6—ARREST

Section
95-618. Roadblocks.

95-603. Issuance and service of arrest warrant upon complaint.

Examination before Issuing Warrant

Arrest warrant was invalid and subsequent search and seizure unlawful where complaint of deputy county attorney, under oath, disclosed nothing more than conclusion that defendant sold quantity of marijuana to undercover narcotics agent, complainant was not examined under oath, and undercover agent could not say that he had purchased from defendant. State ex rel. Wicks v. District Court, — M —, 498 P 2d 1202.

95-606. Arrest without a warrant.

Validity of Warrantless Arrest

A warrantless arrest was valid under section 95-608(d) where detectives smelled burning marijuana emanating from the open doorway to an apartment, where upon entering the apartment police officers saw a clear plastic bag of marijuana and a burned marijuana stub, where probable cause was supported by information from reliable informants concerning previous drug activity in the apartment, and the building owner had informed the police of possible drug use. State v. Bennett, 158 M 496, 493 P 2d 1077.

95-608. Arrest by a peace officer.

Probable Cause

Probable cause existed for arrest on dangerous drug charges of three persons who were present and lived in house where drugs were found; but probable cause did not exist concerning fourth party who

was present on premises but did not live there, notwithstanding later finding of drugs on such party, since mere presence in place was insufficient to justify arrest. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

Reasonable Grounds

Defendant's arrest was based on reasonable grounds required by subsection (d) of this section where an informer had indicated a "pot party" was in progress, defendant was a guest at the party and a participant therein, and the aroma of burning or burnt marijuana was emanating from the premises, all of which was known to the officers prior to their entry, arrest and search. State v. Hull, 158 M 6, 487 P 2d 1314.

A warrantless arrest was valid under subdivision (d) of this section where detectives smelled burning marijuana emanating from the open doorway to an apartment, saw a clear plastic bag of marijuana and a burned marijuana stub upon entering the apartment, where probable cause was supported by information from reliable informants concerning previous drug activity in the apartment, and the building owner had informed the police of possible drug use. State v. Bennett, 158 M 496, 493 P 2d 1077.

95-618. Roadblocks. (a) * * * [Same as parent volume.]

(b) Authority to Establish Roadblocks. The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

(c) to (e) * * * [Same as parent volume.]

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971.

Amendments

The 1971 amendment inserted "checking for driver's licenses" in subsection (b).

CHAPTER 7—SEARCH AND SEIZURE

Section
95-719. Stop and frisk.

95-701. Searches and seizures—when authorized.

Consent

Where defendant in first-degree murder prosecution had taken sheriff to his house and turned over alleged murder weapon to sheriff, such action did not constitute an illegal search and seizure since defendant voluntarily consented to turning over rifle. State v. Williams, 153 M 262, 455 P 2d 634.

Where appellant, convicted on charge of robbery, had been given three Miranda warnings during course of investigation, evidence obtained from appellant's apartment after he gave consent to police to go there was not the product of an unlawful search and seizure and therefore its admission was not error, notwithstanding that no warrant was issued for such search. State v. Braden, 154 M 90, 460 P 2d 85.

95-704. Grounds for search warrant.

Description of Place and Property

Warrant which directed law enforcement personnel to search a 1969 blue one-half ton Chevrolet pick up, Montana license 2T-5275 located in Custer County garage in Miles City, County of Custer, State of Montana sufficiently described object of search. State v. Meidinger, — M —, 502 P 2d 58.

General Warrant

Search warrants which incorporated phrase "any .22 caliber pistol" and "any other property or evidence they might discover that may connect to the demise" of deceased was not a "general warrant," and therefore was not constitutionally invalid. State v. Quigg, 155 M 119, 467 P 2d 692.

"Probable Cause"

There was not probable cause for issuance of search warrant for burglar tools and illegal drugs based on judge's personal knowledge of the accused's reputation and witnesses' observations of a pillow and tools in his car from which accused drew gun. State v. Bentley, 156 M 129, 477 P 2d 345.

Affidavit, based on hearsay from reliable and credible informants with no felony convictions, was sufficient basis for a search warrant for dangerous drugs where informants' statements were results of direct personal observations, reliable information as to the present status of the situation existed, and the police officers made corroborative statements that the suspect was a dangerous drug user and an associate of users of narcotics. State v. Troglia, 157 M 22, 482 P 2d 143.

Stolen property in plain sight which is discovered by police during lawful impounding of vehicle may be used as basis of probable cause for issuance of search warrant, even though defendant was not in vehicle at time of arrest but vehicle was later found near scene of arrest. State ex rel. Wilson v. District Court, — M —, 498 P 2d 1217.

95-705. Scope of search with warrant.

Description of Place and Property

Search warrant directing officers to search for "a walkie-talkie, license plates, and there may be fingerprints, letters, papers, burglary tools, and other objects or materials which may be the fruit of an offense or evidence of an offense," sufficiently described objects to be seized. State v. Meidinger, — M —, 502 P 2d 58.

95-707. By whom served.

General Description of Officer

A search warrant directed to "any peace officer of this state," was a valid warrant. State v. Meidinger, — M —, 502 P 2d 58.

95-717. When search and seizure not illegal.

Disclaimer

Evidence discovered during search of house occupied by defendant's mother was properly admitted on charge of burglary since defendant disclaimed any interest in property recovered from search and had no possessory interest in his mother's home. State v. Dess, 154 M 231, 462 P 2d 186.

95-719. Stop and frisk. (1) A peace officer may stop any person he observes in circumstances that give the peace officer reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against the person or theft, damage or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that the peace officer has reasonable cause to suspect has just been committed if:

(a) the peace officer has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that the peace officer has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property; and

(b) the peace officer has reasonable cause to suspect the person committed the felony; and

(c) the stop is reasonably necessary to obtain or verify his identity to determine whether to arrest the person for the felony; or the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

(4) A peace officer who has lawfully stopped a person under this section may:

(a) frisk that person and take other reasonably necessary steps for protection if the peace officer has reasonable cause to suspect that the person is armed and presently dangerous to the peace officer or another person present; and

(b) take possession of any object that the peace officer discovers during the course of the frisk if the peace officer has probable cause to believe the object is a deadly weapon.

(5) A peace officer who has lawfully stopped a person under this section may demand of the person his name and his present or last address.

(6) A peace officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer and that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(7) After the authorized purpose of the stop has been accomplished or thirty (30) minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973.

CHAPTER 10—RIGHT TO COUNSEL

Section
95-1005. Remuneration of appointed counsel.

95-1001. Right to counsel.

Attorney's Lien

Court could not summarily impose a lien on defendant's estate in favor of county for services of counsel appointed when it was thought defendant might be indigent. Petition of Hunsinger, 153 M 445, 456 P 2d 304.

Effect of Discharge of Counsel

There was no ground for appeal based on inadequate representation where defendant attempted to discharge his appointed counsel one day before trial after counsel had adequately represented defendant for months. State v. Forsness, — M —, 495 P 2d 176.

95-1002. Waiver of counsel.

Waiver of Right to Counsel

Even though appellant was not eighteen years old, but rather seventeen years and eight months old, this section did not apply where defendant had been convicted of robbery, had I.Q. of 122, had been in trouble with law before, had spent time in state correctional school, had been given three Miranda warnings and had waived his right to counsel. State v. Braden, 154 M 90, 460 P 2d 85.

95-1005. Remuneration of appointed counsel. Whenever, in a criminal action or proceeding, an attorney at law represents or defends any person by order of the court, on the ground that the person is financially unable

to employ counsel, such attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding. Such costs shall be chargeable to the county in which the proceeding arose, except in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal, city or police court wherein costs shall be chargeable to the city or town in which the proceeding arose.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973.

Amendments

The 1973 amendment added the exception at the end of the second sentence.

CHAPTER 11—BAIL

95-1108. Bailable offenses.

Presumption of Guilt

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was remanded for new trial where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after the verdict but appeared for sentencing, made proof as to an amount of bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court's opinion did not discuss five issues, one of which was the sufficiency of the evidence. State v. Campbell, — M —, 500 P 2d 801.

95-1109. Bail after conviction.

Abuse of Discretion

Where complete presentence investigation was conducted, trial court did not abuse its discretion by refusing admission to bail pending appeal after defendant was convicted of second-degree murder and sentenced to fifty years in state prison. State v. Kotarski, 154 M 309, 462 P 2d 873.

95-1119. Bail on a new trial.

Reversal of Conviction

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was remanded for a new trial where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after the verdict but appeared for sentencing, made proof as to an amount of bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court's opinion did not discuss five issues, one of which was the sufficiency of the evidence. State v. Campbell, — M —, 500 P 2d 801.

CHAPTER 12—PRELIMINARY EXAMINATION

95-1202. Proceedings at the preliminary examination.

Option To Use Information

Order by justice of peace setting a time and place for preliminary hearing does not prevent prosecution from proceeding instead by information filed under section 95-1301. State v. Dunn, 155 M 319, 472 P 2d 288.

Right to Preliminary Hearing

Where supporting affidavit filed under section 95-1301(a) established probable cause to the satisfaction of the district judge, defendant had no right to a preliminary hearing to conduct a "fishing expedition" for pretrial discovery of prosecution's evidence. State v. Dunn, 155 M 319, 472 P 2d 288.

CHAPTER 13—LEAVE TO FILE INFORMATION AND TIME FOR FILING INFORMATION

95-1301. Leave to file information.

Bypassing Preliminary Hearing

Where preliminary hearing was ordered for defendant after an initial appearance before justice of the peace, prosecutor was not precluded thereby from subsequently filing for leave to file an information under this section. State v. Dunn, 155 M 319, 472 P 2d 288.

Granting Leave

Where relators were arrested and charged with possession of dangerous drugs, district court did not err in granting leave to file informations against such persons, pursuant to this section, since probable cause existed for arrest of these persons without warrant. State ex rel. Glantz v. District Court, 154 M 132, 461 P 2d 193.

Probable Cause

Arrest of defendant in presence of codefendant at site of one burglary and subsequent discovery in codefendant's automobile of property stolen in another burglary earlier in same evening did not establish probable cause for information against defendant for earlier burglary. State ex rel. Wilson v. District Court, — M —, 498 P 2d 1217.

Sufficiency of Facts Alleged

Where evidence in supporting affidavit established probable cause to satisfaction of district judge, defendant had no right to preliminary hearing to enable him to discover information and knowledge of state's witnesses. State v. Dunn, 155 M 319, 472 P 2d 288.

An affidavit is sufficient to establish jurisdiction of the district court if it specifies that the offense was committed within the county even though the county contains an Indian reservation and the affidavit has not negated the possibility that the offense was committed within the reservation. State ex rel. Bell v. District Court, 157 M 35, 482 P 2d 557.

An affidavit which does not give specific time and place is insufficient to show probable cause even though it alleges that the defendant committed the offense of rape by intercourse with a female child under eighteen, not his spouse, within the county. State ex rel. Bell v. District Court, 157 M 35, 482 P 2d 557.

Supporting Affidavit

There is no requirement under subsection (a) that a supporting affidavit of a witness having direct knowledge of facts sufficient to establish probable cause be filed with the application to file an information. State v. Dunn, 155 M 319, 472 P 2d 288.

Absence of supporting affidavit for leave to file information contrary to this section was not fatal error, since it is a procedural matter and does not affect substantial rights of the defendant. State v. Logan, 156 M 48, 473 P 2d 833.

In its discretion, district court may require evidence other than affidavit for support before it grants permission for direct filing of information with district court. State ex rel. Bell v. District Court, 157 M 35, 482 P 2d 557.

CHAPTER 14—GRAND JURY

Section
95-1401. Summoning grand juries.
95-1402. Objections to grand jury and to grand jurors.
95-1410. Finding and presentment of the indictment.

95-1401. Summoning grand juries. A grand jury must only be drawn and summoned when the district judge in his discretion considers a grand jury necessary and shall so order. The grand jury must consist of eleven (11) persons, of whom eight (8) must concur to find an indictment. The district judge may direct the selection of one (1) or more alternate jurors who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty he may be replaced by an alternate. The composition and drawing of a grand jury shall be in accordance with the provisions of sections 93-1801 to 93-1804.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973.

Amendments

The 1973 amendment increased the grand jury from seven to eleven persons; and increased the number of votes required to find an indictment from five to eight.

95-1402. Objections to grand jury and to grand jurors. (a) * * * [Same as parent volume.]

(b) Motion to Dismiss. A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn or summoned according to law, or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 95-1403 of this code that eight (8) or more jurors after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973.

Amendments

The 1973 amendment increased the number of jurors specified in the latter part of the second sentence of subdivision (b) from five to eight.

95-1410. Finding and presentment of the indictment. (a) An indictment cannot be found without the concurrence of at least eight (8) grand jurors. When so found it must be endorsed, "a true bill," and the endorsement must be signed by the foreman of the grand jury.

(b) Indictment. How Presented and Filed:

(1) and (2). * * * [Same as parent volume.]

(c) If the defendant is in custody or has given bail and eight (8) jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(d). * * * [Same as parent volume.]

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973.

Amendments

The 1973 amendment increased the number of grand jurors specified in the first sentence of subdivision (a) and in subdivision (c) from five to eight.

CHAPTER 15—CHARGING AN OFFENSE

Section
95-1504. Joinder and discharge of offenses and defendants.
95-1507. Sentence of imprisonment for persistent felony offender.

95-1503. Form of charge.

Sufficiency of Charge

Information charging drug offense was insufficient where it contained neither identity of informer nor specific facts concerning the offense and identity of time and place to protect accused from double jeopardy. State ex rel. Offerdahl v. District Court, 156 M 432, 481 P 2d 338.

Sufficiency of Charge—Unlawful Sale of Drug

Information charging defendant with violation of section 54-132 for sale of dangerous drugs was sufficient even though failing to conform with specific requirements of this section, since defendant was apprised of the charges against him. State v. Dunn, 155 M 319, 472 P 2d 288.

95-1504. (11974, 11975) **Joinder and discharge of offenses and defendants.** (a) to (c). * * * [Same as parent volume.]

(d) When two or more persons are included in the same charge, the court may, at any time, before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged, that he may be a witness for the state.

(e) When two or more persons are included in the same indictment or information, and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, it must order him to be discharged before the evidence is closed, that he may be a witness for his codefendant.

History: Subsections (a) to (c): en. 95-1504 by Sec. 1, Ch. 196, L. 1967.

Subsections (d) and (e): en. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R. C. M. 1921; Secs. 94-7206, 94-7207, R. C. M. 1947; redes, 95-1504 (d) and (e) by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Secs. 1099, 1100.

Compiler's Notes

Subsections (d) and (e) were originally numbered 94-7206 and 94-7207. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this section.

Severance of Issues of Guilt and Sanity

Denial of defendant's motion for severance for trial of issues of defendant's guilt or innocence and his sanity was proper since sections 95-507 and 95-508 provide for those matters to be presented at same trial and to same jury. State v. Olson, 156 M 339, 480 P 2d 822.

95-1506. Prior conviction.

Constitutionality

Subsection (d) of this section does not unconstitutionally deprive accused of right to jury trial. Newman v. Estelle, 156 M 502, 484 P 2d 276, certiorari denied 404 US 966, 92 S Ct 341.

Cross-Examination of Defendant

Even though prosecutor gave notice under this section, defendant was not entitled to enjoin prosecutor from cross-examining defendant on prior convictions in the absence of a showing of prejudice from cross-examination, and defendant was not prejudiced by his failure to testify after injunction was denied. State v. Lewis, 157 M 452, 486 P 2d 863.

Notice

Where state, pursuant to this section, gave proper notice to defendant of its intention to seek increased punishment if defendant was convicted on charge of rape, on basis of defendant's prior conviction of felony, there was no error since jury was not in possession of such information. State v. Metcalf, 153 M 369, 457 P 2d 453.

Sufficiency of Evidence

Mere showing that defendant's name is similar to name of person on charge sheet showing alleged prior offense is not sufficient to authorize enhanced sentence; there must be competent proof that defendant is same person as one named on charge sheet; failure to produce such proof does not invalidate conviction, only sentence. State v. Cooper, 158 M 102, 489 P 2d 99.

95-1507. Sentence of imprisonment for persistent felony offender. (1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than five (5) years nor more than one hundred (100) years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of one (1) year could have been imposed; and

(b) less than five (5) years have elapsed between the commission of the present offense and either,

(i) the previous felony conviction or

(ii) the offenders released on parole or otherwise from a prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender was more than twenty-one (21) years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence, or if the conviction had been set aside in any post-conviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973.

CHAPTER 16—ARRAIGNMENT OF DEFENDANT

95-1608. Irregularity of arraignment.

Failure to File Affidavit

Failure of county attorney to support request for direct information with accompanying affidavit contrary to section 95-1301 was a procedural matter that did not affect substantial rights of the defendant. State v. Logan, 156 M 48, 473 P 2d 833.

CHAPTER 17—PRETRIAL MOTIONS

Section
95-1703. Dismissal on motion of court or application of attorney prosecuting.
95-1711. Effect of former prosecution and multiple prosecutions.

95-1702. Defenses and objections which must be raised before trial.

Waiver

Failure to object in trial court that application for permission to file an information was not accompanied by supporting affidavit contrary to section 95-1301 waived the objection. State v. Logan, 156 M 48, 473 P 2d 833.

95-1703. Dismissal on motion of court or application of attorney prosecuting. (1) The court may, either on its own motion or upon the application of the attorney prosecuting, and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed in the following cases:

If a defendant, after entry of plea upon a complaint, information, or indictment charging a misdemeanor, whose trial has not been postponed upon his application, is not brought to trial within six months.

(3) An order for the dismissal of an action, as provided in this chapter, is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971.

Amendments

The 1971 amendment designated the former provisions as subsection (1) and added subsections (2) and (3).

95-1708. Motion for continuance.

Absence of Witnesses

Trial court did not abuse its discretion in denying continuance to allow defendants time to locate two missing witnesses where defendants' counsel had no knowledge of the whereabouts of the missing witnesses and no showing was made that the testimony of the two witnesses would help the defense. State v. DiGiallonardo, — M —, 503 P 2d 43.

95-1711. Effect of former prosecution and multiple prosecutions. (1) Definitions of terms.

(a) The term "same transaction" includes conduct consisting of:

(i) a series of acts or omissions motivated by a purpose to accomplish a criminal objective, and necessary or incidental to the accomplishment of that objective; or

(ii) a series of acts or omissions motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or the same persons or the property thereof.

(b) An offense is an "included offense" when:

(i) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(ii) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(iii) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(2) Method of prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other; or

(b) one offense consists only of a conspiracy or other form of preparation to commit the other; or

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, and unless the law provides that the specific periods of such conduct constitute separate offenses.

(3) When prosecution barred by former prosecution. Provided the offenses, if more than one, were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge, and provided the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge, after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant, which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in:

(i) a judgment of conviction which has not been reversed or vacated; or

(ii) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(iii) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection, there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

(i) the defendant consents to the termination or waives his right to object to the termination; or

(ii) the trial court, in the exercise of its discretion, finds that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law; or

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law; or

(C) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state; or

(D) the jury is unable to agree upon a verdict; or

(E) false statements of a juror on voir dire prevent a fair trial.

(4) Former prosecution in another jurisdiction—when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate and/or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of the same transaction.

(b) The former prosecution was terminated, after the complaint has been filed on a misdemeanor charge, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense of which the defendant is subsequently prosecuted.

(5) Former prosecution before court lacking jurisdiction or when fraudulently procured by the defendant. A prosecution is not a bar within the meaning of subsections (3) and (4) under any of the following circumstances:

(a) the former prosecution was before a court which lacked jurisdiction over the defendant or the offense; or

(b) the former prosecution was procured by the defendant without the knoweldge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed; or

(c) the former prosecution resulted in a judgment of conviction which was held invalid in any post-conviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973.

CHAPTER 18—PRODUCTION AND SUPPRESSION OF EVIDENCE

Section
95-1807. Compelling testimony: immunity from prosecution.
95-1808. "Witness" and "state" defined.
95-1809 to 95-1812. [Transferred from Title 94.]

95-1802. Depositions.

Admissibility in Evidence

In rape case, testimony of witness given at preliminary hearing in defendant's presence, where witness had been cross-examined by defendant's counsel, and where testimony had been recorded and transcribed by court reporter, was expressly admissible in evidence under this section where proper foundation had been laid first by showing that witness could not be located for trial. State v. Bouldin, 153 M 276, 456 P 2d 830.

Unwillingness of Witness

Affidavit showing that witness had not answered defendant's mailed request to contact attorney to arrange for interview did not sufficiently establish witness's unwillingness to provide information so as to require a court-ordered deposition. State v. Dunn, 155 M 319, 472 P 2d 288.

95-1803. Discovery, inspection, and notice.

Constitutionality

While this section may be unconstitutionally applied, it is constitutional on its face and not repugnant to 4th, 5th, 6th, and 14th Amendments of constitution of United States. State ex rel. Sikora v. District Court, 154 M 241, 462 P 2d 897.

Defendant's rights under fifth, sixth and fourteenth amendments of the United States Constitution were not violated by operation of subsection (d) of this section where neither defendant's witness list nor his notice of insanity and self-defense was used to make a prima facie case against him. Radford v. Stewart, 320 F Supp 826.

Amendment of Witness List

Allowing amendment of witness list to include victim of crime was not an abuse of discretion on the part of trial judge. State v. Campbell, — M —, 500 P 2d 801.

Defenses of Insanity and Self-Defense

This section, as it relates to defenses of insanity and self-defense, is to be interpreted as directory only. State ex rel. Sikora v. District Court, 154 M 241, 462 P 2d 897.

Failure To File Notice of Defense

Trial judge might allow psychiatric proof even though motion was untimely but, where defendant's counsel did not comply with court order to submit all motions of defense at time of pleading to information or during six-month delay in going to trial, trial court properly denied defendant's notice of intention to rely on mental disease or defect under subsection (d) of this section as not being timely filed. State v. Bentley, 155 M 383, 472 P 2d 864.

Harmless Error

Defendant was not prejudiced by prosecution's citation of section 94-8904, which had been repealed and replaced by this section, in adding witnesses; this section was a continuation of section 94-8904. State v. Rozzell, 157 M 443, 486 P 2d 877.

95-1804. Motion to produce confession or admission.

List of Witnesses

In the absence of surprise, testimony concerning defendant's oral admission of guilt was properly admitted even though state had not supplied the names of witnesses to the admission. State v. Dunn, 155 M 319, 472 P 2d 288.

95-1806. Motion to suppress evidence illegally seized.

Timeliness of Motion

Where confusion between the parties and the district court over state intention to drop or continue prosecution after defendant's conviction on assault charge caused delay in defendant's filing motion to suppress illegally seized evidence until three days before trial, the motion was neither improper, nor did the fact that it was untimely constitute a waiver under the circumstances. State v. Bentley, 156 M 129, 477 P 2d 345.

95-1807. Compelling testimony: immunity from prosecution. Before or during trial in any judicial proceeding a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence, in accordance with this section, in any investigation or proceeding he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter or thing concerning which he testified or produced evidence.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973.

95-1808. "Witness" and "state" defined. "Witness" as used in 95-1809 through 95-1811, R. C. M. 1947, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution or proceeding. The word "state" shall include any territory of the United States and District of Columbia.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973.

95-1809 to 95-1812. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9002 to 94-9004 and 94-701-1. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-1809	94-9002
95-1810	94-9003
95-1811	94-9004
95-1812	94-701-1

CHAPTER 19—TRIAL IN DISTRICT COURT

Section
95-1901. Method of trial.
95-1915. Verdict.

95-1901. Method of trial. (a). * * * [Same as parent volume.]

(b) Questions of law shall be decided by the court and questions of fact by the jury except on a trial for libel the jury shall determine both questions of law and of fact. Questions of law and fact shall be decided by the court when a trial by jury is waived under subsection (d) of this section.

(c) Defendants in all criminal cases shall have a right to trial by jury not to exceed twelve (12) in number. The parties may agree in writing, at any time before the verdict, with the approval of the court that the jury shall consist of any number less than twelve (12).

(d) Upon written consent of the parties a trial by jury may be waived.

(e) The plea of not guilty puts in issue every material allegation of the indictment, information or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973.

Amendments

The 1973 amendment added the second sentence to subdivision (b); deleted "However, if no capital offense is involved" at the beginning of the second sentence of subdivision (c); inserted a new subdivision (d); and redesignated former subdivision (d) as subdivision (e); and made a minor change in style.

95-1904. Presence of defendant—mistrial for absence.

Conclusive Presumptions

Under this section there is conclusive presumption that defendant was present at all stages of proceeding unless record affirmatively shows the contrary. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.

95-1910. Order of trial.

Admission of Testimony

Where defendant was charged with commission of lewd and lascivious acts upon female under sixteen years of age, admission of testimony from twelve other witnesses concerning other such improper actions before proof of corpus delicti, although possibly technical error under this section, was cured by later permitting prosecuting witness to take stand. State v. Jensen, 153 M 233, 455 P 2d 631.

Instructions—Duty to Object and Point Out Error

Where defendants simply objected to instruction without assigning any grounds, either general or particular, the objection was equivalent to no objection at all, and the instruction was not reviewable on appeal. State v. Best, — M —, 503 P 2d 997.

Opening Statement of Defense

Denial to defendant of opportunity to make opening statement concerning insanity defense until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. State v. Olson, 156 M 339, 480 P 2d 822.

95-1911. When order of trial may be departed from.

Opening Statement of Defense

Denial to defendant of opportunity to make opening statement concerning insanity defense until after presentation of prosecution's case was improper interference with defendant's right to have jury consider his defense. State v. Olson, 156 M 339, 480 P 2d 822.

95-1915. Verdict. (a) Return. The verdict shall be unanimous in all criminal actions. Such verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(b) to (d). * * * [Same as parent volume.]

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973.

Amendments

The 1973 amendment substituted "unanimous in all criminal actions" at the end of the first sentence of subdivision (a) for "unanimous in all felonies and two-thirds (2/3) in all misdemeanors and appeals from justice or police courts."

CHAPTER 20—JUSTICE AND POLICE COURT PROCEEDINGS

Section
95-2006. Verdict.
95-2007. Sentence and judgment.

95-2006. Verdict. (a) Return. The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(b) Several defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Discharge of jury. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; en. 95-2006 by Sec. 31, Ch. 513, L. 1973.

Compiler's Notes

Chapter 513 repealed former section 95-2006, effective January 1, 1974 and enacted a new section which, except for an insignificant variation, is identical to the section as amended by Ch. 4, Laws of 1973.

Amendments

Chapter 4, Laws of 1973, substituted the third sentence of subdivision (a) for a sentence reading "Two-thirds (2/3) in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all jurors had concurred therein"; and substituted "unanimous concurrence" in the second sentence of subdivision (c) for "a two-thirds (2/3) concurrence."

95-2007. Sentence and judgment. (a) and (b). * * * [Same as parent volume.]

(c) If the defendant pleads guilty, or is convicted either by the court or by a jury, the court must impose a sentence of fine or imprisonment or both, as the case may be. The court may suspend the execution of the sentence up to the maximum sentence allowed for the particular offense. The court may impose any reasonable conditions or restrictions on the sentence which it deems necessary. If alcohol or other drugs are involved the court may impose such rehabilitative measures as it deems advisable under the circumstances.

(d). * * * [Same as parent volume.]

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973.

Amendments

The 1973 amendment added the second, third and fourth sentences to subsection (c).

95-2009. Appeal.

Increased Sentence

District court may increase sentence or punishment imposed by justice of peace after trial de novo on misdemeanor charge. State v. Fissette, — M —, 498 P 2d 1208, following Colten v. Kentucky, 405 US 104, 32 L Ed 2d 584, 92 S Ct 1953.

CHAPTER 21—POST-TRIAL MOTIONS

95-2101. New trial.

Bail

Trial court abused its authority in denying bail to defendant whose conviction for first-degree murder was reversed and remanded for a new trial, where defendant offered evidence of good conduct while in prison, was released on bail for a period of two weeks after a verdict but appeared for sentencing, made proof as to an amount of bail and its availability, and was not a security risk; presumption of guilt sufficient to deny bail was not established by previous trial transcript where appellate court did not discuss five issues, including the sufficiency of the evidence. State v. Campbell, — M —, 500 P 2d 801.

Newly Discovered Evidence

Trial court did not err in denying defendant's motion for new trial based on newly discovered evidence in form of statements taken from two witnesses subsequent to trial where such statements were found to contain certain discrepancies by police officers who investigated facts and questioned such individuals and where such evidence added nothing new beyond mere speculation to existing evidence. State v. Quigg, 155 M 119, 467 P 2d 692.

Motion for new trial on the basis of newly discovered evidence filed in district court after thirty-day period for filing with district court was untimely and filed in the wrong court. If the grounds for seeking a new trial do not arise until after the thirty-day period or until after the appeal is filed, the proper procedure is to stay the appeal, remand the case to the district court, file the motion, secure the district court's decision thereon, and continue with the appeal. The supreme court has no jurisdiction to entertain a motion for new trial in the first instance where no reason is advanced nor any basis apparent for failure to follow this procedure. State v. Best, — M —, 503 P 2d 997.

CHAPTER 22—SENTENCE AND JUDGMENT

Section
95-2206. Sentence.
95-2206.1. Sentence to death.
95-2206.2. When no place of imprisonment is specified.
95-2206.3. When no penalty is specified.
95-2206.4. When no felony penalty is specified.
95-2227. Effect of conviction.
95-2228. Fines, costs and forfeitures, how disposed of.
95-2229. Traffic fines collected from juvenile offenders—disposition.

95-2204. Contents of investigation.

Prior Charges

Evidence of prior felony charges was admissible on presentence investigation even though there had been no previous conviction. State v. Harris, — M —, 498 P 2d 1222.

95-2206. Sentence. Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(1) Defer imposition of sentence for a period not to exceed one (1) year for any misdemeanor; for a period not to exceed three (3) years for any felony. The sentencing judge may impose upon the defendant any

reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(a) jail base release;

(b) jail time not to exceed ninety (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

(2) Suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(a) jail base release;

(b) jail time not to exceed (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(3) Impose a fine as provided by law for the offense.

(4) Commit the defendant to a correctional institution with or without fine by law for the offense.

(5) Impose any combination of subsections (2), (3), or (4) above.

(6) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(7) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection (6).

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 31, Ch. 513, L. 1973.

Compiler's Notes

Chapter 513 repealed former section 95-2206 effective January 1, 1974 and enacted a new section.

DECISIONS UNDER FORMER LAW

Condition of Deferred Sentence

Conditioning deferred imposition of sentence on serving term of thirty days in county jail was proper exercise of court's sentencing authority where eighteen year old defendant entered guilty plea and was convicted on charge of sale of dangerous drugs. State ex rel. Woodbury v. District Court, — M —, 495 P 2d 1119, distinguishing State v. Drew, 158 M 214, 490 P 2d 230.

Condition of Parole

Imposing the condition that parolee not be found in the company of any persons under the age of eighteen years and condition that parolee refrain from being in and around the vicinity of certain grade schools, junior high schools, and high schools were within the court's discretion. In re Petition of Dunn, 158 M 73, 488 P 2d 902.

Discretion of Court

The Dangerous Drug Act (54-133 (c)), contemplates that a verdict or plea will be taken and the imposition of sentence deferred or stayed for no longer than three years; the court can impose conditions of probation during the deferment which are not contradictory to a stay of sentence or deferred sentence. State v. Drew, 158 M 214, 490 P 2d 230, distinguished in — M —, 495 P 2d 1119, 1123.

When sentencing a person under 21 pursuant to a special statute (54-133(c)) of the Dangerous Drug Act, the court's discretion is limited by the presumption of entitlement to a deferred imposition of sentence under subsection 2 of former sec. 95-2206. State v. Drew, 158 M 214, 490 P 2d 230.

Good Behavior

Defendant whose sentence for term of three years in state prison was ordered suspended during good behavior was improperly denied credit for time spent on parole when suspended sentence was revoked. Barrows v. State, 155 M 522, 474 P 2d 145.

Jury Instructions

Instructing jury on punishments that could be imposed upon conviction, including probation, deferred sentence and suspended sentence, was prejudicial error; such instructions should not be given in future cases. State v. Zuidema, 157 M 367, 485 P 2d 952, distinguishing State v. Metcalf, 153 M 369, 457 P 2d 453.

Revocation of Deferred Sentence

Where defendant was neither represented by counsel nor told of right to have counsel present at hearing for revocation of deferred sentence, district court erred in denying defendant's motion to vacate the prison sentence that was imposed as a result of the revocation. Petition of Brittingham, 155 M 525, 473 P 2d 830.

Where deferred sentence has been revoked, accused stands before sentencing judge as he did at time of original order; where one charged with assault in second degree and attempted rape was placed on two-year probation and thereafter was brought to trial and plead guilty to subsequent offenses, including another case of second degree assault, revocation of probation and imposition of six-year sentence on first assault charge and concurrent thirty-year sentence on second assault charge were not error. Newman v. Estelle, 156 M 502, 484 P 2d 276, certiorari denied 404 US 966, 92 S Ct 341.

Suspension of Sentence

Where district court decision revoking defendant's probation and imposing previously deferred sentence was reversed and remanded by supreme court three years later, defendant was placed in same status he had prior to district court's decision, so that sentence had not been suspended for more than three years contrary to subsection (2) of this section. Petition of Brittingham, 156 M 89, 475 P 2d 34.

Where the defendant is granted a suspended sentence, sentence is imposed and execution of sentence is suspended in whole or in part up to the maximum time of sentence allowed by law, and the defendant can be released on probation during the time interval with the conditions of probation imposed by the court. State v. Drew, 158 M 214, 490 P 2d 230.

95-2206.1. Sentence to death. When a person is convicted of an offense punishable by death or imprisonment, the court may sentence the offender to death or imprisonment.

History: En. 95-2206.1 by Sec. 31, Ch. 513, L. 1973.

95-2206.2. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed one (1) year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973.

95-2206.3. When no penalty is specified. The court in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided, or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed six (6) months in the county jail or a fine not to exceed five hundred dollars ($500), or both. Where statutes outside of the criminal code refer to a subsequently repealed section in Title 94 for a penalty, then the penalty shall be a fine not to exceed five hundred dollars ($500) or imprisonment in the county jail for a term not to exceed six (6) months, or both.

History: En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973.

95-2206.4. When no felony penalty is specified. The court in imposing sentence upon an offender convicted of an offense which is designated as a felony, and no penalty is otherwise provided, may sentence the offender for any term not to exceed ten (10) years in the state prison.

History: En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973.

95-2207. Withdrawal of plea on a deferred imposition.

Intent of Legislature

The passage of this section demonstrates the intent of the legislature in regard to deferred imposition of sentence; if sentence were imposed or executed in any part, then the end advantage to the entire concept of the deferred sentence could not be attained and this section would become inoperative. State v. Drew, 158 M 214, 490 P 2d 230.

95-2213. Merger of sentences.

Concurrent Sentence Unless Specified

Under this section, if district court does not specify whether sentence is to run concurrently or consecutively, it will run concurrently with any prior commitment. Petition of Parrett, 154 M 257, 459 P 2d 268.

95-2215. Credit for incarceration prior to conviction.

Retroactive Application

This section did not apply to prisoner who was sentenced after effective date of this section for crime committed prior to such effective date. Petition of Wilson, 154 M 508, 463 P 2d 469.

95-2226. Sheriff's responsibility, etc.

Parole Violation

This section did not apply to prisoner released on parole but not on furlough, and prisoner was not entitled to counsel as a matter of right at hearing on parole violation. Petition of Osier, 156 M 165, 477 P 2d 344.

95-2227. Effect of conviction. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973.

95-2228. Fines, costs and forfeitures, how disposed of. All fines and forfeitures collected in any court, except police courts, must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred; and after such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the said fine or forfeiture is paid to the county treasurer at the time of such payment there shall be filed with the county treasurer, a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action, which statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973.

95-2229. Traffic fines collected from juvenile offenders—disposition. All fines collected by the district courts from children under eighteen (18) years of age for unlawful operation of motor vehicles resulting from traffic summonses issued by the peace officers of the cities, counties, or by highway patrolmen, together with that portion of the fines which is specified in section 75-7903 shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(a) fines collected as the result of summonses issued by city police officers shall be distributed to the city in which the police officer is employed, and credited to the city general fund;

(b) fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund;

(c) fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana and by him credited to the general fund of the state;

(d) that portion of the fines, as provided for in section 75-7903, shall be paid to the state treasurer of Montana and by him credited to the automobile driver education account in the earmarked revenue fund.

History: En. 95-2229 by Sec. 11, Ch. 513, L. 1973.

CHAPTER 24—APPEAL BY STATE AND DEFENDANT

95-2404. Scope of appeal.

Question of Law

Contention by appellant that he was improperly sentenced for violation of Dangerous Drug Act due to lack of evidence necessary to overcome presumption regarding sentencing of persons 21 years old or under was clearly legal question properly addressed to supreme court. State v. Simtob, 154 M 286, 462 P 2d 873.

95-2425. Substantial and insubstantial errors on appeal.

Technical Errors—Witness's Remarks

Where trial court on defendant's motion directed state's witnesses not to reveal victim's pregnancy, fact that one witness mentioned the pregnancy to jury did not provide basis for mistrial, since no substantial right was affected. State v. Bentley, 155 M 383, 472 P 2d 864.

95-2428. Indigent appeals.

Determining Financial Need

It would have been unconscionable to permit proceeding in forma pauperis by petitioner whose income for previous year was $13,000 and who had house, vehicles and furniture worth over $11,000, even though petitioner had only a small bank balance and owed over $800 in taxes. Petition of Allen, 156 M 163, 476 P 2d 510.

CHAPTER 25—APPELLATE REVIEW OF LEGAL SENTENCES

95-2503. Review—decision.

Questions Reviewable

Review division established by this chapter provides appellate review of "legal" sentences and therefore could not review contention by defendant that his sentence under Dangerous Drug Act was "illegal" under statutory presumption regarding sentencing. State v. Simtob, 154 M 286, 462 P 2d 873.

CHAPTER 26—POST-CONVICTION HEARING

95-2601. Petition in the trial court.

NOTE.—Uniform State Law. The following states have enacted the Uniform Post-Conviction Procedure Act: Arkansas, Idaho, Iowa, Maryland, Minnesota, Nevada, North Dakota, Oregon, South Carolina and South Dakota.

CHAPTER 27—HABEAS CORPUS

95-2716. No release for technical defects.

Technical Defects

Where court intended to vacate sentence to permit representation by counsel but said that it was vacating judgment, this was a mere technical defect and would not form the basis for habeas corpus. Petition of Eldiwitw, 153 M 468, 457 P 2d 909.

CHAPTER 28—IMPEACHMENT

Section
95-2801. Officers liable to impeachment.
95-2802. Sole power of impeachment.
95-2803 to 95-2817. [Transferred from Title 94.]
95-2819. [Transferred from Title 94.]

95-2801. (11668) **Officers liable to impeachment.** The governor, executive officers, heads of state departments, and judicial officers shall be liable to impeachment for felonies and misdemeanors, or malfeasance in office.

History: Our present impeachment laws are substantially the same as the territorial acts which provided for trial by the council. See Secs. 41-62, pp. 196-199, Cod. Stat. 1871; re-en. as Secs. 41-62, 3d Div. Rev. Stat. 1879; re-en. as Secs. 41-63, 3d Div. Comp. Stat. 1887; re-en. Sec. 1500, Pen. C. 1895; re-en. Sec. 8972, Rev. C. 1907; re-en. Sec. 11668, R. C. M. 1921; Sec. 94-5401, R. C. M. 1947; amd. Sec. 2, Ch. 5, L. 1973; redes. 95-2801 by Sec. 29, Ch. 513, L. 1973. Cal. Pen. C. Sec. 737.

Compiler's Notes

Section 95-2801, as shown in bound Volume Eight, is still in force as section 95-103. However, it has not been reprinted in this supplement under its new number since there has been no change in text.

The section shown above as sec. 95-2801 was formerly sec. 94-5401 but was redesignated by Ch. 513, Laws of 1973. For the prior version, see bound Volume Eight under 94-5401.

Amendments

The 1973 amendment substituted "executive officers, heads of state departments" for a reference to other state officers; deleted "except justices of the peace" following "judicial officers"; and substituted "felonies" for "high crimes."

95-2802. (11669) **Sole power of impeachment.** The sole power of impeachment vests in the house of representatives; the concurrence of two-thirds (⅔) of all the members being necessary to the exercise thereof. Impeachment shall be tried by the senate sitting for that purpose, and the senators shall be upon oath or affirmation to do justice according to law and evidence. When the governor or lieutenant-governor is on trial, the chief justice of the supreme court shall preside. No person shall be convicted without a concurrence of two-thirds of the senators elected.

History: En. Sec. 1501, Pen. C. 1895; re-en. Sec. 8973, Rev. C. 1907; re-en. Sec. 11669, R. C. M. 1921; Sec. 94-5402, R. C. M. 1947; amd. Sec. 1, Ch. 10, L. 1973; redes. 95-2802 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

Section 95-2802, as shown in bound Volume Eight, is still in force as section 95-104. However, it has not been reprinted in this supplement under its new number since there has been no change in text.

The section shown above as sec. 95-2802 was formerly sec. 94-5402 but was redesignated by Ch. 513, Laws of 1973. For the prior version, see bound Volume Eight under 94-5402.

Amendments

The 1973 amendment increased the vote in the house of representatives required by the first sentence from a majority to two-thirds of all members.

95-2803 to 95-2817. [Transferred from Title 94.]

Compiler's Notes

Sections 95-2803 to 95-2806, as shown in bound Volume Eight, are still in force as secs. 95-105 to 95-108. However, they have not been reprinted in this suppement under their new numbers since there has been no change in text.

Present sections 95-2803 to 95-2817 were originally numbered 94-5403 to 94-5417. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-2803	94-5403
95-2804	94-5404
95-2805	94-5405

New Sec.	Vol. 8	New Sec.	Vol. 8
95-2806	94-5406	95-2812	94-5412
95-2807	94-5407	95-2813	94-5413
95-2808	94-5408	95-2814	94-5414
95-2809	94-5409	95-2815	94-5415
95-2810	94-5410	95-2816	94-5416
95-2811	94-5411	95-2817	94-5417

95-2819. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-5419. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in the section, it is not reprinted here but may be found as sec. 94-5419 in bound Volume Eight.

CHAPTER 29—PRESUMPTION OF INNOCENCE

Section
95-2901, 95-2902. [Transferred from Title 94.]

95-2901. (11971) Defendant presumed innocent—reasonable doubt.

Compiler's Notes

This section was originally numbered 94-7203. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7203.

Burden of Proof

Jury instruction taken verbatim from section 94-2704.1 that stated that possession of recently stolen livestock is prima facie evidence of guilt of larceny did not constitute reversible error, since, even though state has burden of proof in criminal cases, the burden of evidence may shift to defendant. State v. Gloyne, 156 M 94, 476 P 2d 511.

Circumstantial Evidence

Conviction of defendant on charge of burglary in first degree on only circumstantial evidence consisting of ten rolls of half-dollars, three of which had been identified by store owner in front of witness, fact that defendant's father-in-law two weeks after burglary had deposited these rolls of half-dollars in bank after receiving them from defendant in payment of debt, and testimony by one witness that she had seen defendant in store two days before burglary, did not violate this section on grounds that evidence was insufficient to warrant conviction; burden of proof never shifts, but burden of evidence may shift frequently, and where all evidence is circumstantial, test is whether facts and circumstances are of such quality and quantity to support jury determination of guilt beyond reasonable doubt; fact alone that evidence is circumstantial is not sufficient grounds to justify reversal. State v. Proctor, 153 M 90, 454 P 2d 616.

95-2902. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-7204. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7204.

CHAPTER 30—EVIDENCE

Section
95-3001, 95-3002. [Transferred from Title 94.]
95-3004. The burden in a homicide trial.
95-3010, 95-3011. [Transferred from Title 94.]
95-3012. Testimony of person legally accountable.

95-3001, 95-3002. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-7209 and 94-7210. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not re-

printed here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3001	94-7209
95-3002	94-7210

95-3004. The burden in a homicide trial. (a) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death, and that the death was caused by a criminal agency.

(b) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances or mitigation, excuse or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973.

95-3010, 95-3011. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-8801 and 94-8802. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3010	94-8801
95-3011	94-8802

95-3012. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in section 94-2-106, unless he is corroborated by other evidence, which in itself, and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense; and the corroboration is not sufficient, it merely shows the commission of the offense, or the circumstances thereof.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973.

CHAPTER 31—UNIFORM CRIMINAL EXTRADITION ACT

Section

95-3101. Definitions.
95-3102. Fugitives from justice—duty of governor.
95-3103. Demand—form.
95-3104. Investigation by governor.
95-3105. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion.
95-3106. Extradition of persons not present in demanding state at time of commission of crime.
95-3107. Issuance of warrant of arrest by governor—recitals therein.
95-3108. Execution of warrant—manner and place thereof.
95-3109. Authority of arresting officer.
95-3110. Rights of accused persons—application for writ of habeas corpus.
95-3111. Penalty for noncompliance with preceding section.
95-3112. Confinement of accused in jail when necessary.
95-3113. Arrest of accused before making of requisition.
95-3114. Arrest of accused without warrant therefor.
95-3115. Commitment to await requisition—bail.
95-3116. Bail—in what cases—conditions of bond.
95-3117. Extension of time of commitment adjournment.
95-3118. Bail—when forfeited.
95-3119. Persons under criminal prosecution in this state at time of requisition.
95-3120. Guilt or innocence of accused, when inquired into.
95-3121. Alias warrant of arrest.

95-3122. Fugitives from this state—duty of governors.
95-3123. Application for issuance of requisition—by whom made—contents.
95-3124. Fugitives from this state—accounts.
95-3125. No fee to be paid to public officer procuring surrender.
95-3126. Receiving fee for services in arresting fugitives.
95-3127. Immunity from service of process in certain civil actions.
95-3128. Written waiver of extradition proceedings.
95-3129. Nonwaiver by this state.
95-3130. No immunity from other criminal prosecutions while in this state.
95-3131 to 95-3136. [Transferred from Title 94.]

95-3101. Definitions. Where appearing in this act, the term "governor" includes any person performing the functions of governor by authority of the law of this state. The term "executive authority" includes the governor, and any person performing the functions of governor in a state other than this state. The term "state," referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973.

95-3102. Fugitives from justice—duty of governor. Subject to the provisions of this act, the provisions of the constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973.

95-3103. Demand—form. No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, except in cases arising under section 95-3106, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973.

95-3104. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another

state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973.

95-3105. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in section 95-3123 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973.

95-3106. Extradition of persons not present in demanding state at time of commission of crime. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section 95-3103 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this act not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

History: En. 95-3106 by Sec. 14, Ch. 513, L. 1973.

95-3107. Issuance of warrant of arrest by governor—Recitals therein. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973.

95-3108. Execution of warrant—manner and place thereof. Such warrant shall authorize the peace officer or other person to whom directed

to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this act to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973.

95-3109. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973.

95-3110. Rights of accused persons—application for writ of habeas corpus. No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall be first taken forthwith before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged, and what he has the right to demand and procure legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, and to the said agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973.

95-3111. Penalty for noncompliance with preceding section. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant, in willful disobedience of the last section, shall be guilty of a misdemeanor and, on conviction, shall be fined not more than one thousand dollars ($1,000) or be imprisoned not more than six (6) months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973.

95-3112. Confinement of accused in jail when necessary. The officer or persons executing the governor's warrant of arrest, or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other state, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973.

95-3113. Arrest of accused before making of requisition. Whenever any person within this state shall be charged on the oath of any credible person before any judge or magistrate of this state with the commission of any crime in any other state, and except in cases arising under section 95-3106 with having fled from justice, or, with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation, or parole, or whenever complaint shall have been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under section 95-3106, has fled from justice, or with having been convicted of a crime in that state and having escaped from bail, probation, or parole and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this state, and to bring him before the same or any other judge, magistrate or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer charge or complaint and affidavit and a certified copy of the sworn charge or complaint or affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973.

95-3114. Arrest of accused without warrant therefor. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one (1) year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth

the ground for the arrest as in the preceding section; and thereafter this answer shall be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973.

95-3115. Commitment to await requisition—Bail. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged, and, except, in cases arising under section 95-3106 that he has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding thirty (30) days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973.

95-3116. Bail—in what cases—conditions of bond. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking, and for his surrender, to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973.

95-3117. Extension of time of commitment adjournment. If the accused is not arrested under warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of sixty (60) days or a supreme court justice or county judge may again take bail for his appearance and surrender, as provided in section 95-3116, but with a period not to exceed sixty (60) days after the date of such new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973.

95-3118. Bail—when forfeited. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, or magistrate by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973.

95-3119. Persons under criminal prosecution in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973.

95-3120. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor, or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime.

History: En. 95-3120 by Sec. 14, Ch. 513, L. 1973.

95-3121. Alias warrant of arrest. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973.

95-3122. Fugitives from this state—duty of governors. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail probation or parole in this state, from the chief executive of any other state, or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973.

95-3123. Application for issuance of requisition—by whom made—contents. I. When the return to this state of a person charged with crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged, in which the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the

warden of the institution or sheriff of the county from which the escape was made, shall present to the governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or magistrate, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973.

95-3124. Fugitives from this state—accounts. When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the board of examiners, and paid out of the state treasury.

History: En. 95-3124 by Sec. 14, Ch. 513, L. 1973.

95-3125. No fee to be paid to public officer procuring surrender. No compensation, fee or reward of any kind can be paid to or received by a public officer of this state, or other person, for a service rendered in procuring from the governor the demand mentioned in section 95-3124 or for the surrender of the fugitive or for conveying him to this state, or detaining him therein, except as provided for in such section.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973.

95-3126. Receiving fee for services in arresting fugitives. Every person who violates any of the provisions of section 95-3125 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973.

95-3127. Immunity from service of process in certain civil actions. A person brought into this state on, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until he has been convicted in the criminal proceedings, or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973.

95-3128. Written waiver of extradition proceedings. Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in sections 95-3107 and 95-3108 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of any court of record within this state a writing wihch states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in section 95-3110.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality, to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973.

95-3129. Nonwaiver by this state. Nothing in this act contained shall be deemed to constitute a waiver by this state of its right, power or privilege to try such demanded person from crime committed within this state, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, a sentence or punishment for any crime committed within this state, nor shall any proceedings had under this act which result in, or fail to result in, extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any way whatsoever.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973.

95-3130. No immunity from other criminal prosecutions while in this state. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may

be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973.

95-3131 to 95-3136. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-1101-1 to 94-1101-6. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3131	94-1101-1
95-3132	94-1101-2
95-3133	94-1101-3
95-3134	94-1101-4
95-3135	94-1101-5
95-3136	94-1101-6

CHAPTER 32—PROBATION, PAROLE AND CLEMENCY

Section
95-3201, 95-3202. [Transferred from Title 94.]
95-3202.1. Retaking or re-incarceration of parolee or probationer under interstate supervision.
95-3202.2. Hearing officers for interstate cases.
95-3202.3. Notice of allegations—counsel—confrontation of witnesses—record.
95-3202.4. Record of hearing in another state to have effect in Montana.
95-3203, 95-3204. [Transferred from Title 94.]
95-3205. Definitions.
95-3206 to 95-3219. [Transferred from Title 94.]
95-3220. Return of parole violator.
95-3221, 95-3222. [Transferred from Title 94.]
95-3223. Cases of executive clemency.
95-3224. Notice of hearing on applications for executive clemency.
95-3225 to 95-3227. [Transferred from Title 94.]
95-3228. When publication not necessary.
95-3229 to 95-3233. [Transferred from Title 94.]

95-3201. Governor may make interstate compact for control of crime, etc.

Compiler's Notes

This section was originally numbered 94-7901. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7901.

NOTE.—Uniform State Law. The following states have enacted the Uniform Act of Out of State Parolee Supervision: Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

Constitutionality

Requirement that parolee sign waiver of extradition before release to another state was not unconstitutional, and parolee could be detained for parole violation by unauthorized departure from the host state. In re Petition of Schwartz, 154 M 505, 463 P 2d 316.

95-3202. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-7902. Section 2, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-7902.

95-3202.1. Retaking or re-incarceration of parolee or probationer under interstate supervision. Where supervision of a parolee or probationer is

being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or re-incarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this act within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this state shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed fifteen (15) days prior to the hearing and, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or re-incarceration if it appears to the hearing officer or offices that retaking or re-incarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973.

Title of Act

An act providing for interstate parole and probation hearing procedures, requiring notice, assistance of counsel, confrontation of witnesses under certain conditions, a hearing record, and authorizing out-of-state hearings.

95-3202.2. Hearing officers for interstate cases. Any hearing pursuant to this act may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973.

95-3202.3. Notice of allegations—counsel—confrontation of witnesses—record. With respect to any hearing pursuant to this act, the parolee or probationer:

(1) Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation.

(2) Shall be permitted to consult with any persons whose assistance he reasonably desires, prior to the hearing.

(3) Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons.

(4) May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: En. Sec. 3, Ch. 75, L. 1973.

95-3202.4. Record of hearing in another state to have effect in Montana. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this act, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: En. Sec. 4, Ch. 75, L. 1973.

95-3203. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-9821. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-2821.

95-3204. Board of pardons—organization.

Compiler's Notes

This section was originally numbered 94-9822. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9822.

Cross-References

Board continued in department of administration, sec. 82A-804.

Terms of office of board members after reorganization, sec. 82A-112(2)(b).

95-3205. Definitions. When used in this act, unless the context otherwise requires:

(a) "Probation" is the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(b) "Parole" is the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(c) "Executive clemency" refers to the powers of the governor as provided by section 12 of article VI of the constitution of the state of Montana.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R. C. M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-9823 in bound Volume Eight.

Amendments

The 1973 amendment changed the constitutional reference in subsection (c) from section 9 of article VII of the 1889 constitution to section 12 of article VI of the new constitution.

95-3206. [Transferred from Title 94.]

Compiler's Notes

This section was originally numbered 94-9824. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this

title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9824.

95-3207. Director and employees—salaries to be paid monthly, etc.

Compiler's Notes

This section was originally numbered 94-9825. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9825.

Cross-References

Director's position renamed, sec. 82A-804(4).

95-3208 to 95-3211. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9826 to 94-9829. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3208	94-9826
95-3209	94-9827
95-3210	94-9828
95-3211	94-9829

95-3212. Conditions of probation or suspension of sentence.

Compiler's Notes

This section was originally numbered 94-9830. Section 29, Ch. 513, Laws of 1973, renumbered it to appear in this title. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9830.

Conditions for Parole

Where parolee was ordered not to be found in the company of persons under the age of eighteen and to refrain from being in and around the vicinity of certain grade schools, junior high schools, and high schools under section 95-2206, and he was further restricted to Silver Bow county, excluding the city of Butte, the latter condition does not violate this section. In re Petition of Dunn, 158 M 73, 488 P 2d 902.

95-3213. Arrest—subsequent disposition.

Compiler's Notes

This section was originally numbered 94-9831. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9831.

Parole Violation

This section does not require parolee to be taken before court for complete hearing on parole violation but provides only for persons on probation or on suspended sentence. Petition of Spurlock, 153 M 475, 458 P 2d 80.

95-3214 to 95-3216. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9832 to 94-9834. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3214	94-9832
95-3215	94-9833
95-3216	94-9834

95-3217. Persons may be heard—counsel.

Compiler's Notes

This section was originally numbered 94-9835. Section 29, Ch. 513, Laws of 1973 renumbered it to appear here. Because there has been no change in text, the section is not reprinted here but may be found in bound Volume Eight as sec. 94-9835.

Appointment of Counsel Not Required

There is no constitutional right to counsel at parole revocation hearing, but rather a statutory right under this section, which by no means requires board to provide counsel for parolee. Petition of High Pine, 153 M 464, 457 P 2d 912.

Right to Counsel and Hearing

Parolee not released on prison furlough as provided under section 95-2217 was not entitled as of right to counsel and hearing before district court regarding parole violation, since neither is required under this section. Petition of Osier, 156 M 165, 477 P 2d 344.

95-3218, 95-3219. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9836 and 94-9837. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3218	94-9836
95-3219	94-9837

95-3220. Return of parole violator. At any time during release on parole or conditional release the board may issue a warrant for the arrest of the released prisoner for violations of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return such prisoner to the actual custody of the penal institution from which he was released, or to any other suitable detention facility designated by the board. Any probation and parole officer may arrest such prisoner without a warrant, or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention, shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner may, if circumstances warrant, be incarcerated in such institution.

After the arrest of said prisoner, a hearing shall be held within a reasonable time, unless such hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over this hearing. This hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of this hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

The hearings officer shall make a summary of what transpires at the hearing in terms of the responses of the parolee and the substance of the documents or evidence given in support of parole revocation and of the parolee's position. Based on the information given to him, the hearings officer must determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as specified in section 95-3217.

If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation

and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release and this report shall be accompanied by the findings of the hearings officer. Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged, under such rules and regulations as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release, or enter such other order as it may see fit.

A prisoner for whose return a warrant has been issued by the board shall, after the issuance of such warrant, if it is found that the warrant cannot be served, be deemed a fugitive or to have fled from justice. It it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest, or any part of it, shall be counted as time served under the sentence, shall be determined by the board.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R. C. M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-9838 in bound Volume Eight.

Amendments

The 1973 amendment substituted "may, if circumstances warrant, be" for "shall remain" in the last sentence of the first paragraph; inserted the second and third paragraphs; substituted the present first sentence of the fourth paragraph for the former sentence; and deleted "or upon an arrest by a warrant as herein provided," from the beginning of the second sentence in the fourth paragraph.

Appointment of Counsel Not Required

Under this section, parole violator is required to be brought before board for hearing, but court hearing is not required; parole violator does not have constitutional right but has statutory right to an attorney at parole revocation hearing, and board is not required to furnish parolee an attorney during such hearing. Petition of Wing, 154 M 501, 464 P 2d 302.

Promptness of Hearing

Where five-month delay by parole board was seemingly caused by parolee being in hospital, requirement under this section that hearing be "prompt" was not violated. Petition of Spurlock, 153 M 475, 458 P 2d 80.

95-3221, 95-3222. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9839 and 94-9840. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3221	94-9839
95-3222	94-9840

95-3223. Cases of executive clemency. The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted, and as to the individual circumstances relating to social conditions of the applicant. If the board, or a majority thereof, approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R. C. M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-9841 in bound Volume Eight.

Amendments

The 1973 amendment substituted "executive clemency" at the end of the first sentence for "pardons, remissions of fines and forfeitures, and commutations of punishment after conviction and judgment for any offenses committed against the criminal laws of this state."

95-3224. Notice of hearing on applications for executive clemency. After the board has duly considered an application for executive clemency, and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for Executive Clemency concerning ....., a convict confined in the State Prison (or to one ....., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of ..... committed at ....., in the County of ....., State of Montana, on the ..... day of ....., 19....., and sentenced for a term of ..... years.

"Therefore, be it ordered that ..... the ..... day of ....., 19....., be set apart for the consideration of said Executive Clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at ..... o'clock of said day, at .....

"Further, ordered that a copy of this order be printed and published in the ..... (here insert name of some newspaper of general circulation in the county where the crime was committed) a daily (or weekly) newspaper printed and published at ..... in the county of ....., once each week for two weeks beginning, ..., 19....., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R. C. M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973.

Amendments

The 1973 amendment substituted "or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture" for "(or commutation, remission of the fine or forfeiture)" in the second paragraph of the order.

Compiler's Notes

The previous text of this section may be found under sec. 94-9842 in bound Volume Eight.

95-3225 to 95-3227. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9843 to 94-9845. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3225	94-9843
95-3226	94-9844
95-3227	94-9845

95-3228. When publication not necessary. No publication need be made as provided in sections 95-3224, 95-3225, and 95-3226, in the following cases:

1. When there is imminent danger of the death of the person convicted or imprisoned.

2. When the term of imprisonment of the applicant is within ten (10) days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R. C. M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973.

Compiler's Notes

The previous text of this section may be found under sec. 94-9846 in bound Volume Eight.

Amendments

The 1973 amendment renumbered this section; and substituted the reference to sections 95-3224, 95-3225, and 95-3226, for a reference to sections 94-9842, 94-9843 and 94-9844.

95-3229 to 95-3233. [Transferred from Title 94.]

Compiler's Notes

These sections were originally numbered 94-9847 to 94-9851. Section 29, Ch. 513, Laws of 1973, renumbered them to appear in this title. Because there has been no change in text, the sections are not reprinted here but may be found in bound Volume Eight as follows:

New Sec.	Vol. 8
95-3229	94-9847
95-3230	94-9848
95-3231	94-9849
95-3232	94-9850
95-3233	94-9851

Desk

REVISED CODES OF MONTANA

VOLUME 9

1973 Cumulative Pocket Supplement

Indexing

AMENDMENTS TO ACTS AND NEW LAWS ENACTED BY THE LEGISLATIVE ASSEMBLY SINCE PUBLICATION OF REPLACEMENT VOLUME 9 OF THE 1947 REVISED CODES

Edited by

CHARLES B. TURNEY, A.B., LL.B.

and

THE PUBLISHERS' EDITORIAL STAFF

Editorial Supervisor

WESLEY W. WERTZ

THE ALLEN SMITH COMPANY
Publishers
Indianapolis, Indiana 46202

Copyright © 1959, 1961, 1963, 1965, 1967, 1969, 1971 by
The Allen Smith Company
Indianapolis, Indiana

Copyright © 1973 by
The Allen Smith Company
Indianapolis, Indiana

INDEX

References are to Title and Section numbers

For index to Criminal Code of 1973, see special pamphlet issued separately.

A

ABSTRACTERS OF TITLE
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
compensation of members of board, 66-2104
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings conducted by board, 82A-1604
money received by board, deposit and use, 66-2104
retention of functions by board, 82A-1605

ACADEMY
Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy

ACCORD AND SATISFACTION
Affirmative defense, M. R. Civ. P., Rule 8(c)

ACCOUNTANTS
Corporations for practice of accountancy, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Investment advice exempt from securities act, 15-2004

ACCOUNTS RECEIVABLE
Sale of accounts subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS

ACTIONS
Commencement of action by complaint, M. R. Civ. P., Rule 3
Dismissal of action
class actions, court approval required for dismissal or compromise, M. R. Civ. P., Rule 23(c)
costs when dismissed action is again commenced, M. R. Civ. P., Rule 41(d)
failure to issue or serve summons as ground, M. R. Civ. P., Rule 41(e)
involuntary dismissal, M. R. Civ. P., 41(b)
voluntary dismissal, M. R. Civ. P., Rule 41(a)
Form of action, M. R. Civ. P., Rule 2
Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68
Poor person may sue or defend without costs, 93-8625
Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)
Uniform Commercial Code rights and obligations, action to enforce, 87A-1-106

ACTS
Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills

ADJUTANT GENERAL
Appointment, 77-117, 82A-1401
Assistant adjutants-general, appointment, rank, and duties, 77-117
Head of department of military affairs, 82A-1401

References are to Title and Section numbers

ADJUTANT GENERAL (Continued)
Salary, 77-117
Transfer of functions to department, 82A-1403

ADMINISTRATIVE PROCEDURE
Agencies subject to requirements, 82-4202
Appeals from administrative agencies, district court jurisdiction, 1972 Const., VII, 4
Citation of act, 82-4201
Contested cases
appeals to supreme court, 82-4217
cross-examination of witnesses, 82-4210
disqualification of examiner, 82-4211
documentary evidence, 82-4210
evidentiary rules, 82-4210
examiners for conduct of hearings, appointment and powers, 82-4211
ex parte consultations, restrictions on, 82-4214
final decisions, form and notice to parties, 82-4213
findings of fact, basis, 82-4209
hearing of all parties, 82-4209
informal disposition permitted, 82-4209
judicial review of contested cases, 82-4216
appeal to supreme court, 82-4217
license proceeding treated as contested case, 82-4215
notice required before hearing, 82-4209
official notice of judicially cognizable facts, 82-4210
proposal for decision, service and arguments on, 82-4212
public availability of decisions, 82-4213
record in contested case, contents, 82-4209
subpoena powers of examiners, 82-4211
Counsel, right to appear by, 82-4221
Declaratory rulings by agencies, 82-4218
Definition of terms, 82-4202
Exempt agencies, 82-4202
Judicial review of contested cases, 82-4216
appeal to supreme court, 82-4217
License proceedings treated as contested case, 82-4215
Organization of agency to be prescribed by rule, 82-4203
Register of rules and notices, compilation and publication by secretary of state, 82-4206
Repeal of inconsistent provisions, 82-4224
Rules of agencies
annual review of rules, 82-4204
code of rules, compilation and publication, 82-4206
declaratory judgment on validity, 82-4219
effective date of rule changes, 82-4205
emergency adoption of rule without notice of hearing, 82-4204
filing of rules with secretary of state, 82-4205
format for rules prescribed by secretary of state, 82-4205
hearings before action on rules, 82-4204
judicial notice of rules, 82-4208
legislative review and repeal of rules, 82-4203.1
model rules prepared by attorney general, 82-4203
notice of proposed action on rules, 82-4204
petition for rule changes, 82-4207
practice rules to be adopted, 82-4203
publication of rules, 82-4206
public inspection, rules available for, 82-4203
register of rules maintained by secretary of state, 82-4205
repetition of statutory language to be avoided, 82-4204
scope of rules adopted, 82-4203
Service of process in agency proceedings, 82-4222
Severability of provisions, 82-4225
Subpoena power of agencies conducting proceedings, 82-4220
Subsequent legislation, effect, 82-4223
Supplemental nature of requirements, 82-4223

INDEX

References are to Title and Section numbers

ADOPTION

Adults, procedure for adoption, 61-140
Birth certificate, issuance of substitute on adoption, 69-4420
  recording of substitute certificate, 69-4421
  restoration of original certificate on annulment of adoption, 69-4421
Hard-to-place children, 71-1801 to 71-1805
  agency having custody to exhaust all possible attempts for permanent adoption, 71-1802
  department of social and rehabilitation services to administer law, 71-1803
    rules and regulations, 71-1804
  financial assistance for prospective adoptive parents, 71-1801
    amount of assistance, 71-1804
    county to reimburse state for half of assistance, 71-1805
  "hard-to-place child" defined, 71-1802
  purpose of law, 71-1801
Minor natural parent, right to relinquish child for adoption, 61-218
Registrar of vital statistics, report to, 69-4433
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Service of process on natural parents, 61-211

ADULTERATION

Food, drugs and cosmetics, 27-701 to 27-723—See FOOD AND DRUGS, Food, Drug and Cosmetic Act

ADULTS

Person eighteen years of age or older is adult for all purposes, 1972 Const., II, 14
  minors entitled to all rights not specifically precluded, 1972 Const., II, 15

ADVERTISING

Consumer loan licensees, limitations on, 47-219
Highways, advertising along interstate and primary systems, 32-4715 to 32-4728—See HIGHWAYS, BRIDGES AND FERRIES, Outdoor advertising regulation

AERONAUTICS

Airport passenger service charge authorized, 1-1002
  amount and limit of charge, 1-1002 (1)
  collection of service charge, 1-1002 to 1-1005
    carrier collecting charge, contract, return, remittance, 1-1002, 1-1003
    city, county or airport authority collecting charge, 1-1002 (1)
    civil proceedings for collection of charge authorized, 1-1004
    fee for collection by carrier, 1-1005
  deposit of charges in airport fund, expenditure, 1-1002
  one daily charge as limit, 1-1005
  "passenger air carrier" defined, 1-1001
  refusal of passenger to pay charge as misdemeanor, punishment, 1-1004
City and county establishment of airports
  acquisition of land for airports, 1-801
  annual reserve fund for maintenance and improvements authorized, 1-804
  creation of board to govern airport, 1-803
  eminent domain, power to exercise, 1-802
  expenses, how defrayed, 1-803
  land deemed acquired for public use, 1-802
  validation of previous contracts and tax levies, 1-805.1
Gasoline distributor's license tax, amount, 84-1847
Insurance required of commercial air operators, 1-314
  amount set by commission, 1-315
  continuation in force required, 1-318
  definition of terms
    "aircraft" defined, 1-312
    "commercial air operator" defined, 1-311
    "person" defined, 1-313
  evidence of insurance deposited with commission, 1-316
    copies of policies acceptable as evidence, 1-317
  unauthorized insurers' policies acceptable, 1-321
  violations of act as misdemeanor, 1-320

AERONAUTICS (Continued)
Intrastate air carriers, certification and regulation by commission, 1-323
definition of terms, 1-322
federally certified carriers exempt, 1-322
hearing vacated in absence of protest or request, 1-324
notice of hearing, 1-324
Landing without consent of landowner prohibited, exception, 1-603
Municipal and regional airport authorities
acquisition of property, powers of authority, 1-909
eminent domain proceedings, 1-910
public purpose for acquisition, 1-919
bonds of authority, procedure, terms and conditions, 1-912
tax revenues, pledge to bond payment, 1-916
compensation and expenses of commissioners 1-908
concession contracts for airport supplies and services, 1-913
contracts and leases for use and operation of airport, 1-913
corporate powers of authority, 1-909
county tax levy for support of airport, 1-917
creation and composition of municipal authority, 1-904
creation and composition of regional authority, 1-905
definition of terms, 1-901
disposal of airport property, 1-911
eminent domain proceedings, 1-910
adjoining state or governmental agency exercising powers, 1-922
public purpose for acquisititon, 1-919
employment of personnel, 1-908
exemption of property and income from taxation, 1-920
existing airports, power to acquire, 1-909
eminent domain proceedings, 1-910
extraterritorial airports, 1-922
federal and state aid, acceptance and use, 1-915
hearing required for creation of regional authority, 1-905
interstate agreements for airport operation, 1-922
joint exercise of powers by two or more public agencies, 1-918
interstate agreements, 1-922
meetings of commissioners, 1-908
municipal assistance to airport, 1-921
officers of authority, 1-908
operational contracts for airport, 1-913
powers of authority in general, 1-909
incidental and supplemental powers, 1-923
powers vested in commissioners, 1-908
public purpose in airport development, 1-919
repeal of conflicting acts, 1-926
rules and regulations for airport operation, 1-914
sale of airport property, 1-911
severability of provisions, 1-927
short title of chapter, 1-925
sinking funds for repair, maintenance and capital outlays, accumulation, 1-906
state aeronautics commission exercising powers of authority, 1-902
income from operation, deposit and expenditure, 1-903
operational control of airport, 1-903
supplemental powers of authority, 1-923
taxing power of authority, 1-909
certification of levy, collection and use of revenue, 1-916
county levy for support of airport, 1-917
water ports, power to acquire and construct, 1-909
zoning powers of authority, 1-909
municipal zoning powers preserved, 1-924
Reckless flying prohibited, 1-603
State aeronautics commission
construction of airport under powers of airport authority, 1-902
income from operations, disposition, 1-903
operational control of airport, 1-903

AERONAUTICS (Continued)
State aeronautics commission (Continued)
continuation in advisory and quasi-judicial capacity, change of name, 82A-905
expenses, payment of costs, 1-501
federal aid to municipal or regional authority, commission as agent for, 1-915
rules, insurance of commercial air operators, 1-319
transfer of functions to department of intergovernmental relations, 82A-903

AGE
Person eighteen years of age or older is adult for all purposes, 1972 Const., II, 14
minors entitled to all rights not specifically precluded, 1972 Const., II, 15

AGED PERSONS
Recreational and educational activities of the elderly, local tax levy for, 71-1701

AGENCY
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

AGRICULTURAL EXPERIMENT STATION
Director's responsibility, 75-8411.1
Establishment under state university, 75-8411
Experimental farms, funds available for purchase, 75-8606
Facilities included in station, 75-8411
Federal acts, acceptance of terms, 75-8603, 75-8604
appropriated funds, acceptance and accounting for, 75-8605
Federal grants and cooperative research studies, 75-8411.6
Gifts and donations to station, acceptance, 75-8411.5
Grain and seed laboratory, establishment and purpose, 75-8411.4
Income of station, deposit and use, 75-8411.7
Purpose of station, 75-8411
Research centers, establishment and location, 75-8411.2
Wool laboratory, establishment and purpose, 75-8411.3
advisory committee abolished, 82A-305
functions and operations, 75-8607

AGRICULTURE
Agricultural marketing co-ordinator, 3-116 to 3-123
abolition of position and transfer of functions, 82A-302
advisory body, 3-121
abolition, 82A-305
co-operation, 3-123
definitions, 3-117
duties, 3-119
purpose of act, 3-116
qualifications and responsibilities, 3-118
recommendations, commissioner's reports, 3-122
supervision of commissioner, 3-120
Appropriations for protection, enhancement and development of agriculture, 1972 Const., XII, 1
Bean warehousemen, license required, 3-704
Coloration of wheat, oats, rye or barley
required when products treated with injurious or toxic substances, 94-35-271.1, redes. 3-236
sale or offering for sale in violation of act prohibited, 94-35-271.2, redes. 3-237
violation of act requiring coloration, penalty, 94-35-271.3, redes. 3-238
Commercial feeds, 3-2025 to 3-2039
adulterated feed, definition, 3-2030
prohibition of adulteration or manufacture or distribution of adulterated feed, 3-2031
annual publication by department, contents, 3-2039
co-operation with other agencies, 3-2038
custom-mixed feed exemptions, 3-2027, 3-2028
definition, 3-2025 (8)
document to accompany delivery, contents, 3-2028 (2)

AGRICULTURE (Continued)
Commercial feeds (Continued)
custom-mixed feed exemptions (Continued)
labeling exemption, 3-2028 (1)
registration exemption, 3-2027 (2)
definition of terms, 3-2025
department of agriculture to administer law, 3-2026
enforcement of law by department, 3-2035, 3-2036
embargo of feed in violation, 3-2036 (1)
inspection, sampling and analysis authority, 3-2035
seizure of feed in judicial proceedings, 3-2036 (2)
fees
administration of act as purpose of fees, 3-2033
deposit of fees in earmarked revenue fund, 3-2033
failure to pay inspection fees as violation, 3-2031
inspection fees, 3-2032
permit fees, 3-2027 (1)
registration fees, 3-2027 (2)
inspection by department authorized, scope, 3-2035
fees, 3-2032
violation of confidentiality as misdemeanor, penalty, 3-2037 (6)
labeling requirements, custom-mixed feed exempt, 3-2028
misbranded feed, definition, 3-2029
prohibition of misbranding or manufacture or distribution of misbranded feed, 3-2031
permit required for manufacture or distribution of commercial feed, 3-2027 (1)
annual statement required of permit holder, contents, 3-2032 (2)
application, fee, cancellation, 3-2027 (1)
cancellation for cause by department, 3-2027 (1)
payment of inspection fees by holder, penalty for delay, 3-2032 (2) (a)
pet or specialty pet foods exempt, 3-2027 (1)
records and reports required of holder of permit, 3-2032
transfer of permit prohibited, 3-2027 (1)
pet foods
definitions, 3-2025
permit not required for distribution, 3-2027 (1)
registration required, fee, 3-2027 (2)
prohibitions generally, 3-2031
refusal or cancellation of registration, grounds, hearing, 3-2027 (3)
registration of commercial feed required of distributors, 3-2027
application, fees, issuance of certificate of registration, 3-2027 (2)
custom-mixed feed exempt, 3-2027 (2)
pet food, fee, 3-2027 (2)
refusal or cancellation of registration, 3-2027 (3)
registration continuous upon payment of annual fee, 3-2027 (2)
rules, adoption in conformity to federal law, procedures, 3-2034
violations, civil and criminal remedies, 3-2037
Commercial fertilizers
appeal from commissioner's act, order or ruling, 3-1727
cancellation of registration
grounds for cancellation, 3-1724
hearing on cancellation, 3-1723
definition of terms under fertilizer law of 1957, 3-1714
educational and experimental programs, 3-1731
advisory committee, appointment and composition, 3-1732
meetings and functions of committee, 3-1734
term of office of members, 3-1733
allocation of revenue from assessments, 3-1730
assessment on fertilizer to fund program, 3-1729
goals of program, 3-1731
fees for inspection, 3-1717
labeling of soil amendments, 3-1716
license for distributor to mix materials to order, 3-1715
registration of brands, grades, and soil amendments, 3-1715

AGRICULTURE (Continued)
Commercial fertilizers (Continued)
reports of distributors as to amount distributed, 3-1717
rules and regulations, 3-1723
Commissioner of agriculture
appeals from commissioner's decisions in commercial fertilizer cases, 3-1727
biennial report required, 3-106
classifications of seeds, revision of, 3-821
functions transferred to department, 82A-303
dairy product functions, 82A-1302
oleomargarine regulation functions, 82A-1302
petroleum products functions, 82A-403
poultry functions, 82A-1302
weights and measures functions, 82A-403
oath of office, 3-103
salary, 3-103
Department of agriculture
apiary and bee keeping regulation, 82-805 to 82-814—See STATE ENTOMOLOGIST
functions transferred to department, 82A-502
constitutional authority, 1889 Const., VII, 21; 1972 Const., XII, 1
division of wheat research and marketing, 3-2903
enforcement of act regarding labeling of paints and paint products, 3-1513
power to contract, 3-107
reorganized department, 82A-301 to 82A-305—See REORGANIZATION OF STATE GOVERNMENT, Department of agriculture
transfer of functions to department of business regulation, 82A-403
transfer of functions to department of livestock, 82A-1302
Eggs and egg dealers, disposition of fees from licenses, 3-2302, 3-2315
Farm storage commissioner's office abolished and functions transferred, 82A-302
Fruit pest control, disinfection and destruction of packages and other materials, 3-1103
Fur-bearing animals, production defined as agriculture, 3-110.1
Grading and branding of farm products, 3-1404
Grain merchandisers, license required, 3-228.2
application for license, contents, 3-228.2 (2)
bond required for issuance or renewal of license, amount, scope, 3-228.5
certificate of authority in addition to license may be required, 3-228.2 (1)
definition of terms, 3-228.1
exemptions from licensing requirement, 3-228.2 (6)
expiration of license, 3-228.2 (5)
fee for license, 3-228.2 (3)
deposit of fees in general fund, 3-228.2 (4)
insurance required of public warehouseman, 3-228.6
nonresident licensee, appointment of process agent, 3-228.4
separate license for each place of business required, 3-228.2 (2)
suspension or revocation of license, grounds, 3-228.3
vehicles or vessels used to be noted on application, 3-228.2 (2)
violation as misdemeanor, punishment, 3-228.7
Grain storage as basis for farm credit
expense of administration of act, manner of payment, 3-420
fees and compensation of inspectors, 3-408
Grain testing, fees and charges, 3-233
protein testing, 3-510
Grain warehousemen
bailment, possession of warehouseman construed as, 3-226
definition of terms, 3-201
judicial process for debts of warehouseman, exemption from, 3-226
penalty for false report or failure to file reports, 3-227
reports to commissioner, 3-227
Hours of labor, agriculture employment excepted from maximum hours provision, 1972 Const., XII, 2
Levies on livestock and commodities for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
Montana quality label, procurement and use, fees, 3-2503

AGRICULTURE (Continued)
Mustard seed
administration of act by commissioner of agriculture, 3-1906
foreign material other than dockage, basis and standards for determining, 3-1902
funds accruing, disposition, 3-1910
Nurseries and nurserymen, license required, fees, 3-1212
Pesticides, 27-213 to 27-245—See PESTICIDES
Public warehousemen for farm storage, license required, 3-602
Rodent pest control, purchase and sale of supplies, 3-2704
Rural rehabilitation trust assets, administration, 3-2803
Sealers of grain, fee for filing of certificate, 3-904
Seeds—See SEEDS
Wheat research and marketing
annual report filed by division chief and commissioner, 3-2914
assessment on wheat sold or pledged, 3-2911
federal government as purchaser, assessment inapplicable, 3-2912
payment of assessment, 3-2913
refund of duplicate assessment, 3-2913
bonds of division chief, deputy and assistant, 3-2916
committee appointed by governor, 3-2905
chairman, selection, 3-2908
compensation of members, 3-2906
continuation of committee and transfer to department of agriculture, 82A-304
meetings of committee, 3-2908
powers of committee, 3-2909
removal of committee members by governor, 3-2907
contracts for carrying out research, 3-2918
declaration of policy, 3-2902
definitions, 3-2904
division as part of department of agriculture, 3-2903
gifts, grants or donations for research, 3-2915
invoice delivered by buyer to seller, 3-2913
office established by department, 3-2910
research and marketing account established, receipts, disbursements, 3-2917
short title of act, 3-2901
violations of act, penalty, 3-2919

AIR POLLUTION CONTROL
See also OCCUPATIONAL HEALTH, 69-4206 to 69-4221
Administration of act by state board of health, 69-3907
Advisory council, members and powers, 69-3908
continuation in advisory capacity, 82A-606
Definitions, 69-3906
Director of air pollution control, appointment, powers and duties, 69-3907
Emergency procedure, 69-3915
Exemptions, application for and grounds, 69-3916
Inspection of premises, power to enter, 69-3912
Limitations on effect of act, 69-3922
Limitations on emission of pollutants, 69-3913
Local air pollution control programs, 69-3919
federal aid, 69-3920
state aid, 69-3920
Penalties for violation, 69-3921
Permits required for installation of machinery and other articles that contaminate air, 69-3911
Policy and purpose of act, 69-3905
Prohibition of air contaminating sources, 69-3911
Records, confidentiality, 69-3918
Rules, public hearing and judicial review, 69-3917
Short title of act, 69-3904
Sources of contamination, classification and reporting, 69-3910
State board of health powers, 69-3909
enforcement, 69-3914
limitations on pollutants emission, adoption of more stringent rules, 69-3913
Taxation, classification of property, 69-3923

References are to Title and Section numbers

AIRPORTS
See AERONAUTICS

ALCOHOLIC BEVERAGES
Age for consumption of liquor, 4-161, 4-413
Alcoholic and drug dependency, commission on, 69-6201 to 69-6207—See DEPARTMENT OF HEALTH
Bartenders, minimum age, 41-1135
violation as misdemeanor, 41-1136
Bottle clubs
abatement as nuisance, 4-173
definition, 4-172
penalty for violation, 4-173
prohibited, 4-172
Definition of terms, 4-102
Dentist, administration of beverage by, 4-137
Driving under influence and tests for alcohol, 32-2142 to 32-2142.3—See MOTOR VEHICLES, Driving under influence
Druggist, possession and sale of liquor by, 4-134
Hospital, administration of beverage by, 4-139
Identification cards
age of persons eligible to apply for card, 4-506
false identification documents, penalty for procurement or production, 94-2014
highway patrol cards issued to persons not holding drivers' licenses, 31-170 to 31-174—See HIGHWAY PATROL, Identification cards
Interdiction order, procedure and effect, 4-201
notice and filing of order, 4-202
presence of interdicted person prohibited where liquor sold, 4-164
License proceedings, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Liquor control board
compensation of members, 4-105
composition of board, 4-104
meetings of board, 4-105
samples of beverages received, reports required, 4-153
terms of office of members, 4-104
Manufacture of beverages permitted to federal licensees, 4-140
Montana beer act
age for consumption of beer, 4-330
brewers
barrelage tax, 4-317
financial interest in retailer prohibited, 4-349
fixtures, furniture, equipment, etc., brewers not to supply to retailers, exception, 4-349
persons to whom brewers may sell beer, 4-317
cash sales for beer delivered to retail licensee, 4-349
closing hours for licensed retail establishments, 4-303
credit, limitation on brewer or wholesaler from extending to retailer, 4-349
days establishments to be closed, 4-303
fair associations, special permits for, 4-332
fraternal organizations, special permits to, 4-332
imported beer, tax on, 4-324
licenses
fees for licenses, 4-341
fingerprinting of applicants authorized, 4-408.1
grocery or drugstore, licensing, 4-333
issuing for operation on seasonal basis, 4-333
lapse for nonuse, 4-333
security interest holders against licensee, fingerprinting authorized, exceptions, 4-408.2
wholesaler's license, 4-318
railroad cars or carriers, sales to persons under eighteen years prohibited, 4-337
retail sales for consumption off premises, 4-329

References are to Title and Section numbers

ALCOHOLIC BEVERAGES (Continued)
Montana beer act (Continued)
sale or delivery by wholesaler to public prohibited, 4-322
tax on beer, distribution of revenue to cities and towns, 4-347.1
veterans' organizations, special permits to, 4-332
wholesalers, fixtures, furniture and equipment not to be furnished by, exception, 4-349
Physician, prescription or administration by, 4-136
Purchase of liquor by board, indebtedness for, 4-235
Retail liquor license act
days retail establishments to be closed, 4-414
fingerprinting of applicants for license authorized, 4-409.1
fraternal organizations, special permits for sale, 4-409.1
hearing on application for license, 4-407.1
hours retail establishments to be closed, 4-414
lapse of license for nonuse, 4-403
license for seasonal operation, 4-403
notice of application for license, publication by board, 4-407.1
number of licenses authorized, 4-403
resort licenses, 4-403
security interest holders against licensee, fingerprinting authorized, exceptions, 4-408.2
veterans' organizations, special permits for sale, 4-409.1
Sale of beverages by vendor, 4-116
Samples submitted to liquor control board for testing, 4-153
Schools to give courses in alcohol abuse, 75-8904
dependency commission to consult and advise, 75-8905
purpose of requirement, 75-8901
teacher preparation, 75-8902, 75-8903
State institution inmates, furnishing to as misdemeanor, penalty, 80-1418
State liquor stores
proceeds of sales, disposition, 4-229
withdrawals from inventory, limited purposes, 4-153
Veterinary, administration of beverage by, 4-138
Wage Protection Act for bars and taverns, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

ALCOHOLISM SERVICES CENTER
Location, purpose and powers of center, 80-2404

ALIENATION OF AFFECTIONS
Acts within state not to give rise to cause of action, 17-1203
Cause of action abolished, 17-1201
Litigation and threat of litigation prohibited, 17-1204
Penalty for bringing action, 17-1206
Settlements and compromises void, 17-1205

AMBULANCE SERVICE
County or municipal service, establishment authorized, 69-3601
methods of operation, 69-3602
previously existing service unaffected, 69-3603
License required for operation of service, 69-3606
application for license, 69-3606
cancellation or denial of license, grounds and procedure, 69-3608
co-operative agreements with other agencies, 69-3609
definition of terms, 69-3605
equipment required of licensees, 69-3609
fee for license or renewal, 69-3607
other fees superseded, 69-3613
hearings on cancellation or denial of license, 69-3608
right to hearing, 69-3606
subpoena powers of board, 69-3611
investigations and inspections by department, 69-3610
legislative findings and policy, 69-3604

AMBULANCE SERVICE (Continued)
License required for operation of service (Continued)
penalty for violations, 69-3612
right to license, 69-3606
rules and regulations of board, 69-3609
subpoena power of board, 69-3611

AMENDMENTS
Constitution, 1972 Const., XIV—See CONSTITUTION; CONSTITUTIONAL AMENDMENTS; CONSTITUTIONAL CONVENTION

ANIMALS
Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
Fur-bearing animals, production defined as agricultural pursuit, 3-110.1
Roadside menageries or zoos, 26-1205 to 26-1212—See FISH AND GAME, Menageries, roadside
Shelter, failure to provide as cruelty, 94-1201

ANNEXATION
Contiguous tracts or parcels of land, annexing to cities, procedure, 11-403

APPEALS
Administrative agencies, district court jurisdiction of appeals, 1972 Const., VII, 4
Briefs filed in supreme court
amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
contents of appendix, M. R. App. Civ. P., Rule 25(b)
findings of fact and conclusions of law and opinion of court in nonjury cases, M. R. App. Civ. P., Rule 9(f)
costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
length of briefs, M. R. App. Civ. P., Rule 23(g)
number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
record, references to in briefs, M. R. App. Civ. P., Rule 23(e)
reply brief, contents, M. R. App. Civ. P., Rule 23(c)
respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
time for filing briefs, M. R. App. Civ. P., Rule 26(a)
title of case, statements on cover and first page, M. R. App. Civ. P., Rule 27(c)
typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
setting causes for argument, M. R. App. Civ. P., Rule 39(b)
Commercial fertilizer decisions, appeal from, 3-1727
Constitutional questions raised on appeal, notice to attorney general, M. R. App. Civ. P., Rule 38
Consumer loan commissioner, appeals from, 47-225
Costs on appeal taxed by court, M. R. App. Civ. P., Rule 33(a)
briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
district court costs, M. R. App. Civ. P., Rule 33(c)
notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
Criminal cases, 95-2401 to 95-2430—See CRIMINAL PROCEDURE, Appeals
review of legal sentences, 95-2211, 95-2501 to 95-2504
Cross-appeal, reversal on, M. R. App. Civ. P., Rule 14
Damages for appeal without merit, M. R. App. Civ. P., Rule 32
Decision on appeal, notice to parties, M. R. App. Civ. P., Rule 35(a)
Decision subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2

References are to Title and Section numbers

APPEALS (Continued)
Dismissal of appeals, effect, M. R. App. Civ. P., Rule 12
brief, failure to file as ground for dismissal, M. R. App. Civ. P., Rule 26(c)
record, failure to transmit as ground for dismissal, M. R. App. Civ. P., Rule 11(c)
voluntary dismissal, M. R. App. Civ. P., Rule 36
District court jurisdiction, 1972 Const., VII, 4
District courts, appeals to, applicability of rules, M. R. Civ. P., Rule 81(b)
appellate rules not applicable, M. R. App. Civ. P., Rule 42(b)
justices' or police courts, trial of criminal cases on appeal, 95-2009
Docketing of appeal, M. R. App. Civ. P., Rule 11(a)
respondent docketing appeal, M. R. App. Civ. P., Rule 11(c)
Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)
Exceptions unnecessary to lay ground work for appeal, M. R. Civ. P., Rule 46
Executors' and administrators' acts pending appeal validated, M. R. App. Civ. P., Rule 13
Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
Guardians' acts pending appeal validated, M. R. App. Civ. P., Rule 13
Habeas corpus, appeal from order discharging petitioner, 95-2714
Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
Interest on judgments, M. R. App. Civ. P., Rule 31
Intermediate orders and decisions subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2
Judgment on appeal, entry by clerk and notice to parties, M. R. App. Civ. P., Rule 30(a)
transmission to and entry by clerk of district court, M. R. App. Civ. P., Rule 16
Judgments subject to appeal, M. R. App. Civ. P., Rule 1
Justices' courts, appeal of criminal cases, 95-2009
Milk control board, judicial review of orders, 27-428
Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
Notice of appeal filed in district court, M. R. App. Civ. P., Rule 4(a)
content of notice, M. R. App. Civ. P., Rule 4(c)
form for notice, M. R. App. Civ. P., Appendix of Forms, Form 1
joint or separate notice on joint appeals, M. R. App. Civ. P., Rule 4(b)
neglect in filing notice, extension of time, M. R. App. Civ. P., Rule 5
service of notice, M. R. App. Civ. P., Rule 4(d)
time for filing notice, M. R. App. Civ. P., Rule 5
Occupational disease act, appeals under, 92-1362 to 92-1365
Oral argument before supreme court
agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
order and content of argument, M. R. App. Civ. P., Rule 29(c)
postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
time allowed for argument, M. R. App. Civ. P., Rule 29(b)
Orders subject to appeal, M. R. App. Civ. P., Rule 1
Parties to appeal, designation, M. R. App. Civ. P., Rule 1
public officer as party to appeal, M. R. App. Civ. P., Rule 37(c)
substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
Pauper's form of appeal
application to district court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(a)
application to supreme court to proceed in forma pauperis, M. R. App. Civ. P., Rule 18(b)
form for application, M. R. App. Civ. P., Appendix of Forms, Form 2
typewritten form permitted for papers filed, M. R. App. Civ. P., Rule 18(c)
Police courts, appeal of criminal cases, 95-2009
Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28
Record on appeal, papers and exhibits constituting, M. R. App. Civ. P., Rule 9(a)
agreed statement as record on appeal, M. R. App. Civ. P., Rule 9(d)
correction of the record, M. R. App. Civ. P., Rule 9(e)
dismissal of appeal for failure to file in time, M. R. App. Civ. P., Rule 11(c)

References are to Title and Section numbers

APPEALS (Continued)
Record on appeal (Continued)
fee for filing of record, time of payment, M. R. App. Civ. P., Rule 11(a)
filing of record by supreme court clerk, M. R. App. Civ. P., Rule 11(b)
modification of the record, M. R. App. Civ. P., Rule 9(e)
preliminary hearing in supreme court, transmission of record for, M. R. App. Civ. P., Rule 10(f)
retention of record in district court, M. R. App. Civ. P., Rule 10(d)
stipulation of parties for retention, M. R. App. Civ. P., Rule 10(e)
statement of proceedings in lieu of transcript, preparation and settlement, M. R. App. Civ. P., Rule 9(c)
time for transmission of record, M. R. App. Civ. P., Rule 10(a)
extension of time, M. R. App. Civ. P., Rule 10(c)
reduction of time, M. R. App. Civ. P., Rule 10(c)
transcript of proceedings, preparation and certification, M. R. App. Civ. P., Rule 9(b)
transmission of record by clerk of district court, M. R. App. Civ. P., Rule 10(b)
Rehearing, grounds and time for filing petition, M. R. App. Civ. P., Rule 34
Remittitur to clerk of district court, M. R. App. Civ. P., Rule 16
time of issuance, M. R. App. Civ. P., Rule 35(b)
Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)
Reversal on appeal, remedial powers of supreme court, M. R. App. Civ. P., Rule 15
fiduciary acts pending appeal validated, M. R. App. Civ. P., Rule 13
opinion to accompany remittitur, M. R. App. Civ. P., Rule 35(b)
substantial error required for reversal, M. R. App. Civ. P., Rule 14
Rules of Appellate Civil Procedure, Title 93, Chapter 3001
application of rules and statutes to appeals to supreme court, M. R. Civ. P., Rule 72
citation of rules, M. R. App. Civ. P., Rule 43(a)
constitutional authority for adoption, 1972 Const., VII, 2
effective date of rules, M. R. App. Civ. P., Rule 43(b)
exemption of special statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
scope of rules, M. R. App. Civ. P., Rule 1
statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)
personal service or mail, M. R. App. Civ. P., Rule 20(c)
proof of service, M. R. App. Civ. P., Rule 20(d)
Stay of judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
judgments and orders not subject to stay, M. R. App. Civ. P., Rule 7(c)
perishable property, sale and deposit of proceeds, M. R. App. Civ. P., Rule 7(b)
Substantial rights of parties to be considered on appeal, M. R. App. Civ. P., Rule 14
Supersedeas bond to stay judgment or order pending appeal, M. R. App. Civ. P., Rule 7(a)
form for bond, M. R. Civ. P., Appendix of Forms, Form 23
justification of sureties on bond, M. R. App. Civ. P., Rule 8(b)
liability of surety on bond, enforcement, M. R. App. Civ. P., Rule 8(a)
Supreme court jurisdiction, 1972 Const., VII, 2
Tax appeals, 1972 Const., VIII, 7
Time allowed for proceedings in supreme court
computation of days, M. R. App. Civ. P., Rule 21(a)
extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
filing of appeal, M. R. App. Civ. P., Rule 5
mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
Tort actions against state, 83-703
Undertaking for costs on appeal, contents and filing, M. R. App. Civ. P., Rule 6(a)
justification of sureties on undertaking, M. R. App. Civ. P., Rule 8(b)
liability of surety on undertaking, enforcement, M. R. App. Civ. P., Rule 8(a)
United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P., Rule 35(c)
Verdict subject to review on appeal from judgment, M. R. App. Civ. P., Rule 2

References are to Title and Section numbers

APPEARANCE

Acts constituting appearance by defendant, 93-8505
Criminal cases, appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Jurisdiction of person acquired by voluntary appearance in court, M. R. Civ. P., Rule 4B(2)

APPORTIONMENT

Legislative and congressional apportionment, 1889 Const., VI, 2 and 3; 1972 Const., V, 14; 43-106.6 to 43-106.9
  accelerated effective date of 1972 Const. provision, Transition Schedule, Sec. 1

APPRENTICESHIP COUNCIL

Abolition of council and transfer of functions, 82A-1002
Appointments and terms of members, 41-1201
Chairman and vice-chairman, 41-1201
Composition of council, 41-1201
Director and staff, appointment, 41-1201
Duties of council, 41-1202

APPROPRIATIONS

Bills, generally, 1972 Const., V, 11
Budget
  appropriations not to exceed anticipated revenue, 1972 Const., VIII, 9
  governor to submit budget to legislature, 1972 Const., VI, 9
Expenditures, strict accountability of state and local governmental entities, 1972 Const., VIII, 12
  appropriation and issuance of warrant required, 1972 Const., VIII, 14
Veto of line items by governor, 1972 Const., VI, 10

ARBITRATION AND AWARD

Affirmative defense, M. R. Civ. P., Rule 8(c)
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ARBOR DAY

Date of observance, 75-7407

ARCHAEOLOGICAL SITES

Historic and prehistoric objects and sites on state lands, preservation, 81-2501 to 81-2514—See HISTORIC AND PREHISTORIC STRUCTURES
Legislature to provide for preservation and administration, 1972 Const., IX, 4

ARCHITECTS

Board of architectural examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  compensation of members of board, 66-109
  continuation in office of board members, 82A-1606
  employment of personnel for board, 82A-1604
  legal assistance in hearings conducted by board, 82A-1604
  report of board to governor, 66-109
  retention of functions by board, 82A-1605
Corporations for practice of architecture, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Examination fees, disposition, 66-108
Insurance against errors and omissions required on public contracts, 66-114
License fees, disposition, 66-109
Plans of public buildings, architect's seal and signature required, 66-114
State building programs, appointment of architect, 82-3319
  restrictions on architectural work by state, 82-3320

ARRAIGNMENT

See CRIMINAL PROCEDURE, Arraignment, 95-1601 to 95-1608

References are to Title and Section numbers

ARRESTS

Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Bail
- defendant taken to nearest judge to fix bail, 95-1105
- issuance of warrant for failure to comply with conditions, 95-1107
- peace officer, acceptance of bail, procedure, 95-1103, 95-1104
- sureties or surety company, arrest powers, 95-1115

Close pursuit act, 95-619
Complaint, requirements for issuance and service of warrant, 95-603
Corporations, issuance and service of summons, procedure on failure to appear, 95-615
Definitions, Code of Criminal Procedure, 95-601
Exemptions, persons privileged from arrest, 95-616
- legislators, 1972 Const., V, 8
- voters, 1972 Const., IV, 6

Fingerprints and description taken on felony arrest, 80-2003
- failure to furnish information to state, officer's salary withheld, 80-2004

Force permitted, 95-602
Indictment found, issuance of warrant, 95-1410
"Magistrate" defined, 95-208
Method of arrest, 95-602
Notice to appear, issuance, when authorized, form, failure to appear, 95-614
Oral order for arrest, authority of magistrate, 95-208
Peace officer, arrest by, 95-608
- assisting peace officer, powers of officer and duties of person commanded to aid officer, 95-609
- bail, acceptance of, 95-1103, 95-1104
- duties of officer, 95-604, 95-606
- release by officer of person arrested, when, 95-610

Private person, when arrest by authorized, 95-611
Radar arrest cases—See MOTOR VEHICLES, Radar arrests
Roadblocks, arrest at, 95-618
Search and seizure authorized as incident to arrest, 95-701
Stop and frisk law, 95-719
Summons, issuance, when authorized, form, service, 95-612
- definition of summons, 95-601
- failure to appear, issuance of warrant of arrest, 95-613

Time of making arrest, 95-607
Warrant of arrest
- arrest without warrant, duties of peace officer, 95-606
  - release by officer, when, 95-610
- bail, setting and accepting under warrant, 95-1104
- complaint, requirements for issuance and service of warrant, 95-603
- constitutional requirements, 1972 Const., II, 11
- defective warrant, procedure, 95-605
- definition, 95-601
- duties of peace officer on arrest with warrant, 95-604

ARTS COUNCIL

Appointment and qualifications of members, 82-3602
Biennial report to governer, 82-3606
Chairman and vice-chairman of council, 82-3603
Continuation of council in department of education, 82A-508
Contracts for services and co-operative endeavors, 82-3608
Creation of council, 82-3601
Duties of council, 82-3606
Executive committee, selection, functions, 82-3604
Expenses of members, 82-3603
Fund-raising drives, deposit and use of proceeds, 82-3609
Gifts and donations, acceptance authorized, deposit and use, 82-3607
Officers and employees, compensation, 82-3605
Purpose of council, 82-3601
Terms of members, 82-3603

ASSAULTS

Second degree, definition, penalty, 94-602

References are to Title and Section numbers

ASSEMBLY
Freedom of assembly, 1972 Const., II, 6

ASSIGNMENT FOR BENEFIT OF CREDITORS
Bulk Transfer chapter inapplicable to assignments, 87A-6-103
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

ASSIGNMENTS
Accounts, assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS
Cause of action assigned, defenses available against assignee, 93-2802
Claims against state, assignment of, 83-901 to 83-904
Consumer loan act, wage assignments, 47-220
Contract right assignments subject to Uniform Commercial Code, 87A-9-102—See also SECURED TRANSACTIONS
Definition of term, 19-103
Wage assignments excluded from Uniform Commercial Code, 87A-9-104

ASSOCIATIONS
Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS
Service of process on unincorporated associations, M. R. Civ. P., Rule 4D(2)

ASSUMPTION OF RISK
Affirmative defense, M. R. Civ. P., Rule 8(c)

ATTACHMENT
Affidavit filed to secure attachment before judgment, 93-4302
Availability of remedy before and during action, M. R. Civ. P., Rule 64
Compensation under occupational disease act exempt from, 92-1329
Document of title covering goods, surrender or injunction required for attachment, 87A-7-602
Game wardens' retirement benefits, exemption from attachment, 68-1420
Investment securities, levy against, 93-4307
Personal property subject to security interest, levy against, 93-4338
Range livestock, method of taking possession, 93-4344
filing of papers by county clerk, 93-4346
Release of attachment of real property where no proceedings taken in action, 93-4331.1
Sales under attachment validated despite defects, 93-5846
Summons, attachment at time of issuance, 93-4301
Teachers' retirement system benefits exempt from attachment, 75-6215

ATTACK
Continuity in government, constitutional basis, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource Management

ATTAINDER
Treason or felony, attainder by legislature prohibited, 1972 Const., II, 30

ATTORNEY GENERAL
Board of land commissioners, member of, 1972 Const., X, 4
Candidacy for public office during term authorized, 1972 Const., VI, 5
Commission of attorney general recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
Compromise and settlement of tort actions against state, power, 83-704
Constitutional questions litigated, notice to and intervention by attorney general, M. R. Civ. P., Rule 24(c)
Criminal investigation division, 82-414 to 82-420—See CRIMINAL INVESTIGATION DIVISION
Department of justice, 82A-1201 to 82A-1209—See DEPARTMENT OF JUSTICE
Duties, 1972 Const., VI, 4
Election, 1972 Const., VI, 2

References are to Title and Section numbers

ATTORNEY GENERAL (Continued)
Executive branch, member of, 1972 Const., VI, 1
Health department, legal advice to, 69-4111
Impeachment, subject to, 1972 Const., V, 13
Inability to discharge powers and duties of office, legislative declaration of vacancy, procedure, 59-609
Legal officer of state, 1972 Const., VI, 4
Oath of office, 1972 Const., III, 3
recorded by supreme court, M. R. App. Civ. P., Rule 19(a)
Occupational disease act, duties under, 92-1343
Optometry board, representation in supreme court, 66-1315
Other government employment prohibited during term, 1972 Const., VI, 5
Psychologists' board of examiners, attorney for, 66-3205
Qualifications, 1972 Const., VI, 3
Residence at seat of government, 1972 Const., VI, 1
Salary, 1972 Const., VI, 5; 25-501
Securities act enforcement, 15-2021
Teletypewriter communications system for law enforcement, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS
Term of office, 1972 Const., VI, 1
Tort actions against state, responsibility for litigation on behalf of state, 83-704
Training co-ordinator for county attorneys, appointment, 82-422—See COUNTY ATTORNEY
Vacancy in office, how filled, 1972 Const., VI, 6
Water resources board, duties as legal adviser, 89-103

ATTORNEYS
Annual license tax, 93-2010
disposition of moneys collected, 93-2011
Arrest, attorneys privileged from arrest, when, 95-616
Attorney as justice of the peace, practice of law, limitation, 16-3605
Corporations for practice of law, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Criminal defendants, right to counsel, 1972 Const., II, 24; 95-1001 to 95-1006—See CRIMINAL PROCEDURE, Counsel, right to
Disbarment proceedings, witness fees in, 93-2020
Examination and admission to bar
fees for examination and admission, 93-2015
per diem of examining board members, 93-2014
rules of supreme court, 1972 Const., VII, 2
Fees, contractual right to recovery reciprocal, 93-8601.1
Investment advice exempt from securities act, 15-2004
Judicial officers, restrictions on practice of law by, 1972 Const., VII, 9; 93-902
Pleadings, signature, effect, M. R. Civ. P., Rule 11
Real estate brokers' act, exemption from, 66-1926
Service of process on attorney required, M. R. Civ. P., Rule 5(b)

AUCTION SALES
Bond of auctioneer, terms, 66-204
Bulk transfers at auction sale, procedure required for protection of creditors, 87A-6-108
Completion of sale, 87A-2-328
Memorandum of auctioneer binding bidder and seller, 66-202
provisions not modified by Uniform Commercial Code, 87A-10-103
Nonresident auctioneers, reciprocal privileges, 66-203.1
Real estate brokers' act, auctioneer's acts exempt from, 66-1926

AUTOPSIES
Cases in which authorized, procedure, 69-5103 to 69-5106
Coroner, authority to require autopsy, when, 95-802
liability of mortuary or physician limited, 95-813
Occupational Disease Act, autopsies under, 92-1318

References are to Title and Section numbers

B

BAIL

Amount of bail, how determined, 95-1110
  reduction or increase in amount, application for, 95-1111
Appeal
  bail after conviction, 95-1109
  judge may admit defendant to bail, 95-1102
  reversal of judgment, bail exonerated or money refunded, 95-2430
Arrest bond certificates, 95-1121 to 95-1123
Arrests
  defendant taken to nearest judge to fix bail, 95-1105
  failure to comply with bail or recognizance, issuance of warrant, 95-1107
  peace officer, acceptance of bail, procedure, 95-1103, 95-1104
  sureties or surety company, arrest powers, 95-1115
Attorney prohibited from furnishing bail, 95-1120
Authority to admit to bail, persons authorized, 95-1102
  persons prohibited from furnishing bail, 95-1120
Bailable offenses, 1972 Const., II, 21; 95-1108
Conditions of bail bond, 95-1118
Deposits of cash, stocks or bonds for bail, 95-1112
Discharge of bail upon performance of conditions, 95-1116
Discharge of defendant upon allowance and acceptance, 95-1102
Excessive bail prohibited, 1972 Const., II, 22
Forfeiture of bail, procedure, judgment, 95-1116
  disposition of judgment and execution, 95-1117
Giving bail before another court or judge, duties of judge, 95-1105
Guaranteed arrest bond certificates, 95-1121 to 95-1123
Habeas corpus to obtain admission to, 95-2702
  discharge of person detained, 95-2713
Initial appearance of arrested person, duty to inform of right to bail, 95-902
Judge may admit defendant to bail, 95-1102
Minor offenses, setting and accepting bail, 95-1103
New trial, provisions for bail, 95-1119
Not guilty judgment, defendant discharged from obligation of bail, 95-2202
Peace officer, acceptance of bail, procedure, 95-1103, 95-1104
Purpose of bail, 95-1101
Qualifications of bail, justification by sureties, challenge of bail or sufficiency of sureties, 95-1113, 95-1114
Real estate as bail, amount required, 95-1112
Recognizance, release authorized, duties of court, 95-1106
Revocation of bail, 95-1111
Substitution of bail, 95-1111
Sureties or surety companies, how bail furnished, 95-1112
Surrender of defendant, 95-1115
Warrant of arrest, setting and accepting bail under, 95-1104

BAILORS AND BAILEES

Selling property unlawfully, 94-35-114

BANKRUPTCY

Bulk transfer sale chapter inapplicable to sale by trustee, 87A-6-103
Discharge as affirmative defense, M. R. Civ. P., Rule 8(c)
Real estate brokers' act inapplicable to trustees, 66-1926
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

BANKS AND BANKING

Accounts excluded from chapter on secured transactions, 87A-9-104
Branch banks prohibited, 5-1028
  Uniform Commercial Code does not change law, 87A-10-103
Capital stock required, amount and par value, 5-206
Certification of check, effect, 87A-3-411
Closing of bank in emergency or for special occasion
  additional to other authority for closing bank, 5-1062
  definition of terms, 5-1058

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Closing of bank in emergency or for special occasion (Continued)
effect of closing, 5-1062, 19-107
emergency closing by commissioner, 5-1059
emergency closing by officers of bank, 5-1060
notice to commissioner or comptroller of currency, 5-1061
holiday or special observance, closing for, 5-1060
Credit union provisions inapplicable to banks, 14-157
Deposits and collections
agency of collecting bank for owner of item, 87A-4-201
agreements on applicable state law, restrictions on, 87A-1-105
agreements to vary terms of chapter, 87A-4-103
altered items
customer's duty to report to bank, 87A-4-406
original amount, right to charge to depositor's account, 87A-4-401
waiver of defense against claim against prior parties, 87A-4-406
authenticity of third-party documents presumed, 87A-1-202
availability of deposits for withdrawal, time, 87A-4-213
blanks left in item, bank's right to charge as completed, 87A-4-401
branch office treated as separate bank, 87A-4-106
care required of collecting bank in collection and settlement, 87A-4-202
charge-back against provisional settlement for uncollected items, 87A-4-212
citation of Uniform Commercial Code chapter, 87A-4-101
clearinghouse rules, effect on rights and liabilities, 87A-4-103
commercial instrument payable through bank as authority to collect, 87A-3-120
Commercial Paper chapter subject to Bank Deposits and Collections chapter, 87A-3-103
conflict between chapters of Uniform Commercial Code, 87A-4-102
conflict of laws with respect to bank's liability, 87A-4-102
corresponding banks, collecting bank not liable for defaults of, 87A-4-202
course of dealing between parties, 87A-1-205
cut-off hour for handling of items and making of entries, 87A-4-107
damages for breach of warranty or engagement by collecting bank or customer, 87A-4-207
damages for failure to exercise ordinary care, measure, 87A-4-103
death of customer, effect on items in process of collection, 87A-4-405
deferred posting permitted to payor bank, 87A-4-301
definition of terms, 87A-4-104
"collecting bank," 87A-4-105
"depositary bank," 87A-4-105
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-4-104
"intermediary bank," 87A-4-105
"payor bank," 87A-4-105
"presenting bank," 87A-4-105
"process of posting," 87A-4-109
"remitting bank," 87A-4-105
delay by payor bank in returning item, liability for, 87A-4-302
delay permitted collecting bank in effort to secure payment, 87A-4-108
destruction of item in transit, collecting bank not liable for, 87A-4-202
direct transmission to payor authorized, 87A-4-204
dishonor of item, bank's liability when wrongful, 87A-4-402
dishonor of paper tendered in remittance, collecting bank not liable, 87A-4-211
documentary drafts
dealing with goods by collecting bank following dishonor of draft, 87A-4-504
delivery of documents to drawee on acceptance or payment, 87A-4-503
dishonor of draft, duty of collecting bank to transferor, 87A-4-501, 87A-4-503
lien of collecting bank on goods following dishonor of draft, 87A-4-504
"on arrival" drafts, time for presentment, 87A-4-502
presentment of draft and documents by collecting bank, 87A-4-501
endorsement supplied by depositary bank for customer, 87A-4-205
engagements of collecting bank and customer transferring item, 87A-4-207
excuses for delay by conditions beyond control of bank, 87A-4-108
extension of time permitted collecting bank in effort to secure payment, 87A-4-108

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Deposits and collections (Continued)
Federal Reserve regulations and operating letters, effect on rights and liabilities, 87A-4-103
final settlement of item
acts constituting final settlement, 87A-4-213
time of final settlement by remittance instrument or authorization to charge, 87A-4-211
foreign currency items, rate at which charged back on failure of collection, 87A-4-212
good faith required, 87A-1-203
identification of transferor bank, sufficiency of agreed method, 87A-4-206
incompetence of customer, effect on items in process of collection, 87A-4-405
insolvency of collecting or payor bank, rights and preferences to item in process of collection, 87A-4-214
insolvent banks, deposits accepted by, 5-803
instructions from transferor of item, duty of collecting bank to follow, 87A-4-203
loss of item in transit, collecting bank not liable for, 87A-4-202
media of remittance acceptable by collecting bank, 87A-4-211
order of posting of accepted or paid items, 87A-4-303
overdraft, right of bank to charge to customer's account, 87A-4-401
"pay any bank" endorsement, effect, 87A-4-201
place of presentment of item to payor bank, 87A-4-204
posting process, steps enumerated, 87A-4-109
presentment of item by written notice to party to accept or pay, 87A-4-210
promptness in sending item for collection, factors considered, 87A-4-204
provisional nature of settlement given by collecting bank, 87A-4-201
refund of provisional settlement for uncollected item, right of collecting bank to obtain, 87A-4-212
reservation of rights by party while performing or accepting performance, 87A-1-207
restrictive endorsement not binding on intermediary or payor bank, 87A-4-205
return by payor bank of item provisionally settled, 87A-4-301
security interest of bank in collection item, 87A-4-208
separate office treated as separate bank, 87A-4-106
short title of Uniform Commercial Code chapter, 87A-4-101
stop payment order
duration of effectiveness of order, 87A-4-403
items in process of collection, effect against, 87A-4-303
loss from payment contrary to order, burden of proof, 87A-4-403
opportunity to bank prior to action with respect to item, 87A-4-403
subrogation of bank liable for loss to rights of other parties, 87A-4-407
subrogation of bank liable on stop payment order to rights of other parties, 87A-4-407
suspension of payments by collecting or payor bank, rights in item in process of collection, 87A-4-214
time after which bank not obligated to pay check, 87A-4-404
time allowed for required actions, 87A-1-204
collecting bank, time allowed to for action, 87A-4-202
return of provisionally settled item by payor bank, 87A-4-301
unauthorized signatures, customer's duty to report to bank, 87A-4-406
unpaid items, return to depositary bank by intermediary or payor bank, 87A-4-212
usage of banks, effect on rights and liabilities, 87A-1-205, 87A-4-103
value given by bank supporting status as holder in due course, 87A-4-209
warranties of collecting bank and customer, 87A-4-207
withdrawal of deposits, when available, 87A-4-213
Directors, increase in number, 5-217
articles of agreement to provide for increase, 5-201
Dissolution of bank, when unclaimed distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Drafts, power to accept, 5-1001
Drive-in and walk-up facilities permitted, 5-1028
Examination of bank, trust company or investment company
fee payable for examination, 5-908
special examinations and fees, 5-910

References are to Title and Section numbers

BANKS AND BANKING (Continued)
Holidays, when closing permitted, 19-107
Insolvent banks
priority of payment of debts, 5-1114
restrictions on deposits accepted by, 5-803
Installment loans by banks, charges permitted, 5-527
Investment advice, exemption from securities act, 15-2004
Letters of credit, power to issue, 5-1001—See also LETTERS OF CREDIT
National bank powers extended to state banks, departmental consent required, regulation, 5-1002.1
Public funds, deposit by county, city and town treasurers, 16-2618
Real estate loans, limitations on, 5-506
Reserves, superintendent's power to raise and lower reserves on demand deposits, 5-532
Retail installment sales act
compliance with provisions other than licensing required, 74-603
license not required under, 74-603
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Securities exempt from securities act, 15-2013
Special examination by state examiner, fee, 5-910
State banking board created, composition, qualifications, 5-607
appointment of members, terms, vacancies, 5-608
chairman and executive officer, 5-607
costs and expenses charged to department of business regulation, 5-609
disqualification of member having direct or indirect interest, 5-614
hearings by board, notice and procedure, 5-612
prehearing discovery authorized, 5-613
meetings of board, quorum, 5-609
offices, equipment and personnel, 5-609
per diem and expenses, 5-609
powers of board, 5-610
removal of members, 5-609
rules and regulations to be adopted, contents, scope, 5-611
secretary, election, 5-609
State department and superintendent's position abolished and functions transferred, 82A-402
Taxation
corporation license tax, state and national banks subject to, effective dates, 84-1501.6, 84-1501.7—See TAXATION, Corporation license tax
offices in more than one county, assessment and apportionment of tax, 84-4606
shares of banks, assessment of, 84-307
Unclaimed deposits and funds, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property
Unclaimed funds, disposition, 5-1117

BARBERS AND BARBER SHOPS
Advanced barber training program, clinic or seminar, annual license fee, 66-411
Apprenticeship and apprentice examination, 66-403, 66-409, 66-411
Board of examiners renamed and transferred to department and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
compensation of board members, 66-408
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
moneys received by board, deposit, 66-407
officers of board, 66-407
report of board, 66-408
retention of functions by board, 82A-1605

BASTARDY PROCEEDINGS
Complaint to determine paternity, persons who may file, 93-2901-2
Death of father, liability restricted to obligations accrued before, 93-2901-4
Effective date of act, 93-2901-11

References are to Title and Section numbers

BASTARDY PROCEEDINGS (Continued)
Enforcement of financial obligations of father, 93-2901-2
Judgment against father, form and persons to whom payable, 93-2901-7
Jurisdiction of district court, 93-2901-5
Limitation of actions for past obligations, 93-2901-3
Married woman bearing child of another man, 93-2901-1
Obligations of father defined, 93-2901-1
Paternity determination on complaint, 93-2901-2
Postponement of trial until after birth of child, 93-2901-6
Reciprocal enforcement of support remedies, 93-2901-5
Rules of civil procedure, application, M. R. Civ. P., Rule 81(a), Table A
Security required of father for payment of judgment, 93-2901-8
Uniformity of interpretation of act, 93-2901-10
Venue of proceedings, 93-2901-9

BEDDING
Shoddy control, 69-4701 to 69-4707—See SHODDY

BENEVOLENT ASSOCIATIONS
See INSURANCE, Benevolent associations, 40-4901 to 40-4917

BILL OF RIGHTS
Constitutional provisions, 1972 Const., II
Procedural or substantive rights created for first time prospective and not retroactive, 1972 Const., Transition Schedule, Sec. 3
Unenumerated rights not denied, impaired or disparaged, 1972 Const., II, 34

BILLS
Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills

BILLS OF EXCHANGE
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

BILLS OF LADING
Actions based on shipment, time and manner of institution regulated by terms of bill or tariff, 87A-7-309
Altered bill enforceable according to original tenor, 87A-7-306
Attachment of goods covered by bill, procedure required, 87A-7-602
Authenticity of third-party documents presumed, 87A-1-202
Care required of carrier, 87A-7-309
Citation of Uniform Commercial Code chapter, 87A-7-101
Claims based on shipment, time and manner of presentation regulated by terms of bill or tariff, 87A-7-309
Commercial Paper chapter inapplicable to bills, 87A-3-103
Conflicting claims to goods, carrier compelling interpleader, 87A-7-603
Connecting carriers on through bills, liability, 87A-7-302
Count of packages, duty of carrier, 87A-7-301
Course of dealing between parties, application, 87A-1-205
Damages for loss or injury to goods, limitation by terms of bill or tariff, 87A-7-309
Date on bill erroneous, liability of issuer for, 87A-7-301
Defenses defeated by negotiation of bill, 87A-7-502
Definition of terms, 87A-7-102
  general definitions in Uniform Commercial Code, 87A-1-201
Delivery of goods by carrier
  destroyed bill, 87A-7-601
  good faith delivery exonerating carrier, 87A-7-404
  lien lost for voluntary delivery, 87A-7-307
  lien to be satisfied before delivery, 87A-7-403
  lost bill, 87A-7-601
  obligation of carrier to deliver, 87A-7-403
  persons who may require delivery, 87A-7-403
  stolen bill, 87A-7-601
  surrender of document required before delivery, 87A-7-403

References are to Title and Section numbers

BILLS OF LADING (Continued)
Description of goods guaranteed to issuer by shipper, 87A-7-301
Destination bills, issuance, 87A-7-305
Destroyed bills, obtaining delivery of goods, 87A-7-601
Diversion of goods on instructions of holder, 87A-7-303
consignee's interest defeated by diversion, 87A-7-504
Duplicate bill, rights and liabilities of parties under, 87A-7-402
Endorsement of bill
default by carrier or previous endorser, endorser not liable for, 87A-7-505
negotiation, when endorsement required for, 87A-7-501
nonnegotiable bill, effect of endorsement, 87A-7-501
transferee's right to require necessary endorsement, 87A-7-506
Federal law controlling over Commercial Code chapter, 87A-7-103
Forwarder of freight issuing bill, rights and obligations of parties, 87A-7-503
Good faith required, 87A-1-203
Interpleader of conflicting claims to goods, 87A-7-603
Irregularities in issue of bill, obligations of issuer unaffected, 87A-7-401
Judicial process against goods covered by bill, procedure required, 87A-7-602
Letter of credit requirements, law governing adequacy, 87A-7-509
Lien of carrier
charges covered by lien, 87A-7-307
delivery of goods causing loss of lien, 87A-7-307
delivery of goods, satisfaction of lien required for, 87A-7-403
enforcement of lien, procedure, 87A-7-308
persons against whom lien enforceable, 87A-7-307
refusal to deliver goods causing loss of lien, 87A-7-307
sale of goods to enforce lien, 87A-7-308
Livestock injury, prior law not modified by Uniform Commercial Code, 87A-10-103
Lost bills, obtaining delivery on, 87A-7-601
Misdescription of goods, liability of issuer for, 87A-7-301
Negotiability of bill, requirements for, 87A-7-104
notice of arrival of goods, effect on negotiability of term requiring, 87A-7-501
Negotiation of bill
defenses defeated by negotiation, 87A-7-502
delivery required for negotiation, 87A-7-501
endorsement, when required for negotiation, 87A-7-501
right of holder to require necessary endorsement, 87A-7-506
formal requirements for negotiation, 87A-7-501
rights acquired by holder to whom negotiation made, 87A-7-502
sets of parts, negotiation of bill issued in, 87A-7-304
title required by holder to whom negotiation made, 87A-7-502
warranties of negotiator, 87A-7-507
intermediary delivering bill, 87A-7-508
Nonreceipt of goods, liability of issuer for, 87A-7-301
Overseas shipment of goods, form of bill required, 87A-2-323
bills issued in sets of parts, 87A-7-304
Prior interest prevailing over interest represented by bill, 87A-7-503
Reconsignment of goods on instructions of holder, 87A-7-303
consignee's interest defeated by reconsignment, 87A-7-504
Regulatory laws unimpaired by Uniform Commercial Code, 87A-10-103
controlling over Commercial Code chapter, 87A-7-103
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale contract requirements, law governing adequacy, 87A-7-509
Sale of goods to enforce carrier's lien, 87A-7-308
Security interest in bill, means of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
Seller of goods reserving security interest in goods shipped, 87A-2-505
Sets of parts, liability on bills issued in, 87A-7-304
"Shipper's weight, load and count," meaning and protection accorded issuer, 87A-7-301
Short title of Uniform Commercial Code chapter, 87A-7-101
Stolen bills, obtaining delivery of goods, 87A-7-601
Stoppage in transit by seller of goods
indemnification by seller for losses and expenses, 87A-7-504
surrender of bill required, 87A-2-705

References are to Title and Section numbers

BILLS OF LADING (Continued)
Substitute bill issued at another place, 87A-7-305
Through bills, responsibility for acts of connecting carriers, 87A-7-302
Time allowed for required actions, 87A-1-204
Transfer of bill
endorsement necessary to title, right of transferee to require, 87A-7-506
notification to carrier of transfer, adverse interest perfected before, 87A-7-504
rights acquired by transferee, 87A-7-504
sets of parts, negotiation of bill issued in, 87A-7-304
title acquired by transferee, 87A-7-504
warranties of transferor, 87A-7-507
intermediary delivering bill, 87A-7-508
Unaccepted delivery order, negotiation of bill defeating title based on, 87A-7-503
Unauthorized issuance of bill, obligations of issuer unaffected, 87A-7-401
Unknown goods, description on bill, 87A-7-301
Usage of trade, application, 87A-1-205
Warehouse receipt law, provisions included in but omitted from bills of lading law, 87A-7-105
Warranties by transferor of bill, 87A-7-507
intermediary delivering bill, 87A-7-508
Weighing of bulk freight, duty of carrier, 87A-7-301
Wrongfully procured bill, when defeated by prior interest, 87A-7-503

BIRTH
Certificates of birth, 69-4413 to 69-4423—See VITAL STATISTICS, Birth certificates
Judicial determination of date, application of rules of civil procedure to proceedings, M. R. Civ. P., Rule 81(a), Table A

BLIND PERSONS
Citation of White Cane Act, 71-1303
Guide dogs, right to use in public places, 71-1306
Penalty for violations of White Cane Act, 71-1308
Policy of state to encourage participation in social and economic life, 71-1304
Traffic to stop for person using cane or guide dog, 71-1307
White canes, use restricted to blind persons, 71-1305

BLOOD
Transfusion as service and not sale, 69-2203
immunity of blood bank testing blood before delivery, 69-2204
immunity of physician or hospital in absence of negligence, 69-2203
labeling of containers as to testing procedures used, 69-2205

BOARDING HOMES
County operation of home, 16-1037
services provided at county-operated home, 16-1038
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Lease of county property for home, 16-1036

BOARD OF REGENTS
Chairman, selection, 75-5612
Commissioner as secretary, 75-5612
Commissioner of higher education, appointment, facilities to be provided, 75-5611
Composition, appointment of members, 75-5610
Constituent of state board of education, 75-5609, 75-5615
Creation, 1972 Const., X, 9; 75-5609
Definition, 75-5609
Meetings of board, notice, 75-5613
Oath of members, 75-5610
Per diem and expenses of members, 75-5614
Powers and duties, 75-5617
Qualification of members, 75-5610
Quorum, 75-5612
Record of proceedings required, 75-5616

References are to Title and Section numbers

BOARD OF REGENTS (Continued)
Rules, adoption, 75-5616
Seal, adoption and use, 75-5616
Student as appointive member of board, 75-5619
Transition from former board of education, procedure, 75-5618

BOARDS OF HEALTH
Local boards of health, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
State board of health, 69-4103—See DEPARTMENT OF HEALTH, Board of health

BOILERS
Advisory committee on boiler rules, 69-1501
abolition of committee and transfer of functions, 82A-1005
Certificates of inspection for boilers, 69-1511
exempt boilers, 69-1515
fees for inspection, 69-1512
operation without license unlawful, 69-1517
Engineer's license required, 69-1508
annual renewal of license, 69-1516
classification of engineers, 69-1509
emergency operation by unlicensed person, 69-1517
fees for licenses, 69-1512
penalty for operation without license, 69-1508
qualifications of engineers, 69-1509
re-examination after rejection of license, 69-1513, 69-1514
revocation of license on complaint, 69-1510
New boiler installations, inspection, 69-1503
Special boiler inspectors employed by insurance companies, appointment, 69-1501

BONDS AND UNDERTAKINGS
Bail in criminal proceedings, 95-1101 to 95-1123—See BAIL
Capitol improvement and repair bonds, 78-741 to 78-745—See STATE CAPITOL, Building improvement and repair
City and town officers and employees
adequacy of bond, determination, 6-603
amount of bonds, 6-602
commission and commission-manager governments, 6-608
companies authorized to write bonds, 6-604
competitive bids to be sought, 6-602
conditions in bond, 6-606
form of bonds, approval, 6-605
premiums, payment out of budget, 6-607
purchase of bonds by council or commissioners, persons covered, 6-601
County officers and employees, bonds covering
amount of bonds, determination, 6-204
adequacy supervised by state examiner, 6-205
commissioners to purchase bonds, 6-203
companies authorized to execute bonds, 6-206
competitive bids to be sought, 6-204
filing and recording, 6-208
form of bonds, approval, 6-208
group bonds permitted, 6-203
conditions and signature of bonds, 6-209
premiums, payment out of budget, 6-207
County printing contract, bond of contractor, 16-1231
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials
Fees of secretary of state for receiving and recording, 25-102
Flood control bonds issued by counties and municipalities, 89-3312
Industrial development bonds, 11-4103 to 11-4107—See INDUSTRIAL DEVELOPMENT, Bonds
Issuance, transfer, and registration of investment securities, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
Limitation of actions and defenses relating to issuance of state or municipal bonds, 93-2612

BONDS AND UNDERTAKINGS (Continued)
Long-range building program bonds, 79-2201 to 79-2205—See STATE CAPITOL, Long-range building program financing
Restaurant, bar and tavern wage protection bond, 41-2002 to 41-2010—See WAGES, Restaurant, Bar and Tavern Wage Protection Act
State officers and employees, bonds furnished by
amount of bonds, determination, 6-106
companies authorized to write bonds, 6-107
competitive bidding required, 6-106
controller to purchase bonds, 6-105
form of bonds, approval, 6-105
group bonds permitted, 6-105
judicial officers exempt from general provision, 6-105
legislative employees exempt from general provision, 6-105
premiums, proration and payment, 6-108
Wheat research and marketing, official bonds of division chief, deputy or assistant, 3-2916—See AGRICULTURE

BOULDER RIVER SCHOOL AND HOSPITAL
See also STATE INSTITUTIONS
Admissions to school
application by parent or guardian, investigation and procedure, 80-2304
application other than by parent or guardian, investigation and procedure, 80-2305
availability of room, admission subject to, 80-2306
records to accompany person admitted, 80-2306
residence requirement, 80-2303
temporary admissions to school, 80-2307
transportation costs paid by county, 80-2306
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604
Discharge of persons from school, 80-2309
Division of mental retardation, institution under, 80-2602
Fishing by inmates, license not required, 26-202.1
Functions of institution, 80-2604
Industrial activities permitted, 80-1501 to 80-1503
Location of school, 80-2602
Management and control of school, 80-1401 et seq.
Mental retardation center at Glendive
capacity of center, 80-2311
services provided, 80-2310
supervision of center, 80-2312
Purpose of school, 80-2604
Residence required for eligibility for admittance, 80-2303
Rules, regulations and standards, 80-2610
Superintendent as supervisor of division of mental retardation, 80-2603
Temporary admissions to school, 80-2307
Transfer of patients from other institutions
children's center, 80-2106
Glendive center, 80-2312
juvenile facilities under department of institutions, 80-2209
Transfer of patients to Warm Springs state hospital or Galen state hospital, 80-2308

BOUNTIES
State bounty
advisory committee abolished, 82A-1305
employment of salaried hunters and trappers from bounty funds, 46-1912
expenditure of funds by livestock commission, 46-1903
fraudulent claims under bounty law, penalty, 46-1915
license money available for bounties, 46-1901
sale of furs, skins and specimens, disposition of proceeds, 46-1904
tax levy against livestock to provide moneys, 46-1914, 84-5214

BOXING, SPARRING AND WRESTLING
Report of ticket sales to athletic commission, 82-308
State athletic commission renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
report to governor, 82-302
retention of functions by board, 82A-1605
Tax on gross receipts from exhibitions, payment and deposit, 82-308

BRANCHES OF GOVERNMENT
Executive branch, 1972 Const., VI—See GOVERNOR; LIEUTENANT GOVERNOR; PUBLIC OFFICERS AND EMPLOYEES; REORGANIZATION OF STATE GOVERNMENT; SECRETARY OF STATE; STATE AUDITOR; SUPERINTENDENT OF PUBLIC INSTRUCTION
Judicial branch, 1972 Const., VII—See COURTS; DISTRICT COURTS; JUDGES; JUSTICES OF THE PEACE; SUPREME COURT
Legislative branch, 1972 Const., V—See LEGISLATURE
Separation of powers, 1972 Const., III, 1

BREACH OF PROMISE
Acts within state not to give rise to cause of action, 17-1203
Cause of action abolished, 17-1202
Litigation and threat of litigation prohibited, 17-1204
Penalty for bringing action, 17-1206
Settlements and compromises void, 17-1205

BREAD
Vitamin and mineral contents required, 27-803
definition of terms, 27-801
enforcement procedures, 27-804
modification of requirements, 27-804
penalties for violations, 27-805

BRIBERY
School book selection, unlawful inducement to school official or employee, 75-7610

BROKERS
Securities brokers—See SECURITIES REGISTRATION, Broker-dealers

BUILDING AND LOAN ASSOCIATIONS
Accounts excluded from chapter on secured transactions, 87A-9-104
Credit union provisions inapplicable to associations, 14-157
Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Examination by state examiner, fee for, 5-909
Real estate loans permitted, 7-113.1
Securities exempt from securities act, 15-2013
Special examination by state examiner, fee, 5-910
Unclaimed deposits and funds, when presumed abandoned, 67-2202—See also PROPERTY, Unclaimed property

BUILDINGS
Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
State-wide building construction standards, 69-2104 to 69-2120
applicable to public places outside municipalities, 69-2107
misdemeanor, 69-2119
municipalities, 69-2112, 69-2116, 69-2117

BUILDINGS (Continued)
State-wide building construction standards (Continued)
state building code council, 69-2106
abolition of council and transfer of functions, 82A-1202
adoption of rules, 69-2111
council's powers, 69-2114
injunctive powers, 69-2118
judicial review, 69-2115
state controller's administrative duties, 69-2108, 69-2109
transfer of functions, 82A-1203

BULK TRANSFERS
Agreements as to applicable state law, restrictions on, 87A-1-105
Application of proceeds to debts of transferor, 87A-6-106
Assignments for benefit of creditors not subject to chapter, 87A-6-103
Assumption of debt by transferee exempting from Bulk Transfer chapter, 87A-6-103
Auction sales, procedure required for protection of creditors, 87A-6-108
Authenticity of third-party documents presumed, 87A-1-202
Citation of Uniform Commercial Code chapter, 87A-6-101
Commercial paper transferred in bulk transfer not held in due course, 87A-3-302
Corporate reorganization proceeding not subject to chapter, 87A-6-103
Course of dealing between parties, application, 87A-1-205
Creditors entitled to protection under chapter, 87A-6-109
Definition of terms, 87A-6-102
general definitions in Uniform Commercial Code, 87A-1-201
Equipment transfers, when subject to chapter, 87A-6-102
Exemption of transfers from chapter, 87A-6-103
Good faith required, 87A-1-203
Judicial sales, chapter inapplicable to, 87A-6-103
Lien foreclosure not subject to chapter, 87A-6-103
Limitation of actions and levies by creditors, 87A-6-111
List of creditors, preparation and filing or holding for inspection, 87A-6-104
Manufacturers subject to chapter, 87A-6-102
Merchandise enterprises subject to chapter, 87A-6-102
Notice to creditors of transfer
contents of notice, 87A-6-107
delivery to creditors, means permitted, 87A-6-107
persons to whom sent, 87A-6-107
required for transfer to be effective against creditors, 87A-6-105
Payments in good faith to particular creditors, credit to transferee or auctioneer for, 87A-6-109
Proceeds of sale, application to debts of transferor, 87A-6-106
Schedule of property transferred, preparation and filing or holding for inspection, 87A-6-104
Security interest, creation is not bulk transfer, 87A-9-111
Security transactions not subject to chapter, 87A-6-103
Short title of Uniform Commercial Code chapter, 87A-6-101
Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206
Subsequent transfers by transferee with defective title, effect, 87A-6-110
Time allowed for required actions, 87A-1-204
Usage of trade, application, 87A-1-205

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION
Abolition of bureau and transfer of functions, 82A-1202
Assistance to local officers in establishing and maintaining local bureaus, 80-2006
Co-operation with and assistance to law enforcement officers, 80-2002
Co-operation with FBI and other states, 80-2005
Criminal record of person arrested for felony, information to law enforcement officer, 80-2003
Destruction of fingerprints and description on acquittal of person arrested, 80-2003
Files of identification information, procurement and maintenance by bureau, 80-2002
Fingerprints and other information to be furnished by law enforcement officers, 80-2003
failure to provide information, salary withheld, 80-2004
Institutions to furnish identification material for files, 80-2002

References are to Title and Section numbers

BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION (Continued)
Supervisor of bureau, appointment, 80-2001
Warden of state prison to supervise bureau, 80-2001

BUSINESS CORPORATION ACT
Actions by and against corporations
involuntary dissolution, commencement of action, 15-2289
survival of remedy after dissolution, 15-2298
Administration by secretary of state, 15-22-127
Annual report of domestic and foreign corporations required
contents of report, 15-22-118
existing corporations, filing report required, 15-22-136
failure to file, penalty, 15-22-125
filing of report, 15-22-119
fee, 15-22-121
Appeal from ruling or decision of secretary of state, 15-22-129
Application of act
existing corporations, 15-22-136
foreign and interstate commerce, 15-22-137
Articles of dissolution—See Dissolution, articles of dissolution, below
Articles of incorporation
amendments
certificate of amendment, issuance by secretary of state, 15-2256
disapproval by secretary of state, appeal to district court, 15-22-129
procedure to amend, 15-2253
reorganization, amendment of articles, purposes, procedure, 15-2259
right to amend, 15-2252
vote of shareholders required, 15-2253
class voting of amendments, 15-2254
articles of amendment
certificate of amendment issuance by secretary of state, 15-2256
effect of certificate of amendment, 15-2257
fee for issuance, 15-22-121
contents, 15-2255
execution by corporation, 15-2255
filing of articles with secretary of state, 15-2256
fee for filing, 15-22-121
certificate of amendment, issued by secretary of state, effect, 15-2256, 15-2257
contents, 15-2248
definition, 15-2202
disapproval by secretary of state, appeal to district court, 15-22-129
fee for filing, 15-22-121
filing with secretary of state, 15-2249
foreign corporations, amendment to articles, filing, 15-22-109
greater voting requirements, 15-22-132
restated articles of incorporation, filing, certificate of restatement, issuance and effect of, 15-2258
fees for filing, 15-22-121
waiver of required notice, 15-22-123
Assessment of shares, existing corporations, provisions for levying of assessment, 15-22-136
Books and records, examination by shareholders, 15-2246
Bylaws, adoption, amendment or repeal, 15-2225
Capital
amount of stated capital, determination of, 15-2219
cancellation of reacquired shares, reduction of stated capital, 15-2262
cancellation of redeemable shares, reduction of stated capital, 15-2261
fee for filing statement of reduction of stated capital, 15-22-121
reduction of stated capital, proposal, procedure, 15-2263
"stated capital" defined, 15-2202
surplus and reserves, 15-2264
Certificate of incorporation, issuance by secretary of state, 15-2249
effect of issuance, 15-2250
fee for issuing, 15-22-121

BUSINESS CORPORATION ACT (Continued)
Consolidation—See Merger or consolidation, below
Corporate laws, application to business trust, 15-2508
Definitions, 15-2202
Directors
classification of directors, 15-2235
compensation, 15-2233
consent to action taken without a meeting, 15-22-134
elected at annual meeting of shareholders, 15-2234
voting of shares, 15-2231
executive and other committees, designation by board, authority, 15-2238
liability of directors in certain cases, 15-2242
meetings
consent to action taken without a meeting, 15-22-134
minutes of proceedings, 15-2246
notice of meeting, waiver, 15-2239, 15-22-133
organization meeting, 15-2251
place of holding, 15-2239
quorum of directors, 15-2237
number of directors, 15-2234
qualifications, 15-2233
quorum of directors, 15-2237
removal of directors, 15-2236
signing of false documents, penalty, 15-22-126
survival of remedy after dissolution, 15-2298
terms of office, 15-2234, 15-2235
vacancies occurring in board, how filled, 15-2236
Dissolution
appeal from disapproval by secretary of state, 15-22-129
articles of dissolution
contents, 15-2285
fee for filing, 15-22-121
filing of articles, 15-2286
tax clearance certificate, 15-2285
attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-2288
commencement of action and procedure, 15-2289
bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
continuation of corporate existence to wind up affairs after dissolution, 15-2279, 15-2298
involuntary dissolution
grounds, 15-2287
liquidation proceedings—See Liquidation, below
notice to attorney general by secretary of state of corporations subject to dissolution, 15-2288
venue and process, 15-2289
license tax for final year, liability for, 84-1511
revocation of voluntary proceedings
act of corporation, 15-2282
consent of shareholders, 15-2281
effect of statement, 15-2284
execution of statement by officer of corporation, 15-2281, 15-2282
statement of revocation, filing, 15-2283
Small Business Tax Act option, agreement by shareholders to assume personal liability required, 84-1501.3
statement of intent to dissolve
consent of shareholders, 15-2276
effect of statement, 15-2279
execution by officers of corporations, 15-2277
fee for filing, 15-22-121
filing with secretary of state, 15-2278
procedure after filing of statement, 15-2280
survival of remedy after dissolution, 15-2298
unclaimed distribution, when presumed abandoned, 67-2206

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Dissolution (Continued)
voluntary dissolution
act of corporation, 15-2277
consent of shareholders, 15-2276
incorporators, action to dissolve corporation which has not commenced business, 15-2275
revocation of proceedings, fee for filing statement, 15-22-121
statement of intent to dissolve, 15-2278 to 15-2280
tax clearance certificate, 15-2285
Distributions from capital surplus, 15-2241
liability of directors for unlawful distribution, 15-2242
Dividends
closing of transfer book and fixing record date, 15-2228
corporations engaged in exploiting natural resources, payment out of depletion reserves, 15-2240
cumulative dividends paid out of capital surplus, 15-2241
declaration of by board of directors, 15-2240
share dividends, 15-2240
stock issued as share dividend, surplus transferred to stated capital as consideration, 15-2217
unlawful declaration of dividends, liability of directors, 15-2242
Evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130
Exchange of property or assets by corporation
disposition of assets in other than regular course of business, 15-2272
dissenting shareholders, right to dissent, 15-2273
regular course of business, 15-2271
Existence of corporation
continuation of corporate existence to wind up affairs after dissolution, 15-2279, 15-2298
expiration of existence, notice by secretary of state, 15-22-128
unauthorized assumption of corporate powers, liability, 15-22-135
Existing corporations continued, 15-22-136
assessment of shares, provisions for levying of assessment, 15-22-136
repeal of prior acts, effect, 15-22-139
Expenses of organization, reorganization and financing, payment, 15-2220
Fees
authority of secretary of state to collect, 15-22-120
certified copies of documents, fees chargeable for, 15-22-122
filing documents and issuing certificates, enumeration of fees, 15-22-121
license fees
authority of secretary of state to collect, 15-22-120
domestic corporations, fees payable by, 15-22-123
foreign corporations, fees payable by, 15-22-124
miscellaneous charges of secretary of state, 15-22-122
Foreign corporations
actions by and against corporation, effect of failure to obtain certificate of authority, 15-22-117
admission of foreign corporation, 15-2299
annual report required, contents, 15-22-118
filing of report, 15-22-119
application of act to corporations heretofore authorized to do business in state, 15-22-116
articles of incorporation, amendment, filing, 15-22-109
fee for filing copy of amendment, 15-22-121
certificate of authority
amended certificate, requirements for securing, procedure, 15-22-111
application, fee for filing, 15-22-121
fee for issuing amended certificate, 15-22-121
application, contents, execution, 15-22-103
filing of application, 15-22-104
fee for filing application and issuance, 15-22-121
failure to obtain certificate, effect, 15-22-117
issuance of certificate, effect, 15-22-104, 15-22-105

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)
Foreign corporations (Continued)
certificate of authority (Continued)
limitations on issuance, 15-2299
required to transact business in state, 15-2299
revocation of certificate of authority
appeal from secretary of state, 15-22-120
grounds, 15-22-114
issuance of certificate of revocation, 15-22-115
existing corporations, duty to file annual report, 15-22-136
merger of foreign corporation authorized to do business in state, 15-22-110
fee for filing copy of articles of merger, 15-22-121
merger or consolidation of domestic and foreign corporations, procedure, 15-2270
name of corporation
change of name, 15-22-102
reservation of right to exclusive use, 15-2208
restrictions on contents of name, 15-22-101
powers of foreign corporation, 15-22-100
registered agent required, 15-22-106
change of registered agent, 15-22-107
registered office required, 15-22-106
change of registered office, 15-22-107
service of process on foreign corporation, 15-22-108
withdrawal of foreign corporation
application for withdrawal, contents, 15-22-112
filing of application, 15-22-113
certificate of withdrawal, requirements for issuance, 15-22-112, 15-22-113
fee for filing application and for certificate of withdrawal, 15-22-121
Incorporation
articles of incorporation—See Articles of incorporation, above
expenses of organization, reorganization and financing, payment, 15-2220
organization meeting of directors, 15-2251
Incorporators
delivery of articles of incorporation to secretary of state, 15-2247
dissolution of corporation that has not commenced business, 15-2275
name and address to be included in articles of incorporation, 15-2248
number, 15-2247
organization meeting of directors, notice given by incorporators, 15-2251
Invalidity of part of act, effect of, 15-22-140
Leases of property of corporation
disposition of assets in other than regular course of business, 15-2272
regular course of business, 15-2271
Liability of persons assuming to act as a corporation without authority, 15-22-135
License fees, 15-22-123, 15-22-124
authority of secretary of state to collect, 15-22-120
Liquidation
assets due unknown creditor or shareholder, deposit with state treasurer, 15-2297
creditors, grounds for action for liquidation, 15-2290
filing of claims and notice, 15-2293
decree of dissolution
effect of decree, 15-2295
entry of decree by court, 15-2295
filing of decree, 15-2296
discontinuance of proceedings, 15-2294
grounds for liquidation of assets and business of corporation, 15-2290
jurisdiction of district courts, 15-2290
procedure
liquidation by court, 15-2291
voluntary dissolution, 15-2280
receivers
appointment by court, 15-2291
authority of receivers, 15-2291
compensation, 15-2291
expenses, payment from assets or proceeds of sales, 15-2291
qualifications, 15-2292

BUSINESS CORPORATION ACT (Continued)
Liquidation (Continued)
shareholders, grounds for action for liquidation, 15-2290
Merger or consolidation
appeal from disapproval by secretary of state, 15-22-129
articles of merger or consolidation, contents, filing, 15-2268
fee for filing, 15-22-121
certificate of merger or consolidation
fee for issuing, 15-22-121
issuance by secretary of state, 15-2268
operation and effect, 15-2269
return to surviving or new corporation by secretary of state, 15-2268
consolidation, procedure by board of directors, 15-2266
dissenting shareholders, right to dissent, 15-2273
filing of objections, payment for shares, procedure, 15-2274
domestic and foreign corporations merger or consolidation of, procedure, 15-2270
effect of merger or consolidation, 15-2269
foreign corporation authorized to do business in state, filing of articles of merger, 15-22-110
merger, procedure by board of directors, 15-2265
plan for merger or consolidation, 15-2265, 15-2266
abandonment of plan, 15-2267
approval by board of directors, 15-2265, 15-2266
approval by shareholders, 15-2267
subsidiary corporation, 15-2268
vote of shareholders required, 15-2267
subsidiary corporation, merger by, plan, 15-2268
Mortgages, power to give
disposition of assets in other than regular course of busness, 15-2272
regular course of business, sale or mortgage of assets, 15-2271
Name of corporation
registration of name
fee for registration, 15-2209
procedure, 15-2209
renewal of registration, 15-2210
reservation of right to exclusive use, who may make, procedure, transfer, 15-2208
fee for filing application, 15-22-121
notice of transfer of reserved name, fee for filing, 15-22-121
restrictions on contents of name, 15-2207
Officers
authority and duties prescribed by the bylaws, 15-2244
election by board of directors, 15-2244
removal of officers, 15-2245
signing of false documents, penalty, 15-22-126
Organization of corporation—See Incorporation, above
Penalties
effect of repeal of prior acts, 15-22-139
failure of corporation to file annual report, 15-22-125
signing of false documents by corporate officers or directors, 15-22-126
Pledges of assets by corporation
disposition of assets in other than regular course of business, 15-2272
regular course of business, 15-2271
Powers of corporation
acquisition and disposition of its own shares by corporation, 15-2205
general powers enumerated, 15-2204
ultra vires as a defense, 15-2206
Pre-emptive rights of shareholders, 15-2224
Purposes for which organization is allowed, 15-2203
Receivers—See Liquidation, receivers above
Redemption of stock
cancellation of redeemable shares by redemption or purchase, 15-2261
statement of cancellation, contents, filing, 15-2261
restriction on redemption or purchase of redeemable shares, 15-2260
voting redeemed shares, when prohibited, 15-2231

References are to Title and Section numbers

BUSINESS CORPORATION ACT (Continued)

Registered agent required, 15-2211
change of registered agent, 15-2212
statement of change, fee for filing, 15-22-121
resignation of agent, 15-2212
Registered office required, 15-2211
change of registered office, 15-2212
statement of change, fee for filing, 15-22-121
Reorganization
amendment of articles of incorporation, purposes, procedure, 15-2259
bulk transfer chapter of commercial code inapplicable to sales, 87A-6-103
expenses of reorganization, payment, 15-2220
Repeal of prior acts, effect of, 15-22-139
Reports
annual report of domestic and foreign corporations required—See Annual report of domestic and foreign corporations required, above
forms to be prescribed by secretary of state, 15-22-131
Reservation of power to amend, repeal or modify, 15-22-138
Sale or mortgage of assets
disposition of assets in other than regular course of business, 15-2272
dissenting shareholders, right to dissent, 15-2273
filing of objections, payment for shares, procedure, 15-2274
regular course of business, 15-2271
Secretary of state
appeal from ruling or decision of secretary of state, 15-22-129
articles of incorporation, filing, 15-2249
articles of amendment, filing, 15-2256
cancellation of redeemable shares, filing statement, issuance of duplicate original, 15-2261
certificate of amendment of articles of incorporation, issuance, effect, 15-2256, 15-2257
certificate of incorporation, issuance, 15-2249
evidence, certificates and certified copies issued by secretary of state to be received, 15-22-130
fees and charges
authority to collect, 15-22-120
enumeration of fees for filing documents and issuing certificates, 15-22-121
license fees, 15-22-123, 15-22-124
miscellaneous charges, 15-22-122
foreign corporations
certificate of authority
amendment, procedure, 15-22-111
issuance, 15-22-104, 15-22-105
revocation, 15-22-114, 15-22-115
merger, filing of articles, 15-22-110
withdrawal, issuance of certificate, 15-22-112, 15-22-113
forms for reports to be prescribed by secretary of state, 15-22-131
involuntary dissolution, corporations, subject to notice to attorney general, 15-2288
merger or consolidation of corporations
issuance of certificate, 15-2268
operation and effect, 15-2269
subsidiary corporation, filing of articles, 15-2268
notice of expiration of corporate existence, 15-22-128
power to administer act, 15-22-127
reorganization, amendment of articles, filing, issuance of certificate, 15-2259
restated articles of incorporation, filing, certificate of restatement, 15-2258
voluntary dissolution of corporation
filing of articles of dissolution, 15-2286
revocation of voluntary proceedings, statement of revocation, filing, 15-2283, 15-2284
statement of intent to dissolve, filing with, 15-2278, 15-2279
Service of process on corporation, 15-2213
criminal offenses, service of summons, 95-615
foreign corporations, 15-22-108

BUSINESS CORPORATION ACT (Continued)
Shareholders
action against corporation, defense of ultra vires, 15-2206
actions by shareholders, 15-2243
consent to action taken without a meeting, 15-22-134
definition, 15-2202
dissolution of corporation
act of corporation, vote of shareholders, 15-2277
revocation of voluntary proceedings
act of corporation, action by shareholders required, 15-2282
consent of shareholders, 15-2281
voluntary dissolution by consent of shareholders, 15-2276
examination of books and records of corporation, 15-2246
liability of subscribers and shareholders, 15-2223
liquidation of assets and business of corporation, grounds for action, 15-2290
meetings
annual meeting, 15-2226
closing of transfer books, 15-2228
consent to action taken without a meeting, 15-22-134
minutes of proceedings, 15-2246
notice of meetings, 15-2227
waiver of notice, 15-22-133
place of holding, 15-2226
quorum, 15-2230
record date, fixing of, 15-2228
special meetings, 15-2226
voting list, 15-2229
merger or consolidation, rights of dissenting shareholders, 15-2273, 15-2274
pre-emptive rights of shareholders, 15-2224
sale or exchange of assets, rights of dissenting shareholders, 15-2273, 15-2274
survival of remedy after dissolution, 15-2298
voting list, 15-2229
voting of shares—See Voting powers of shareholders, below
Shares—See Stock, below
Short title of act, 15-2201
Stock
authorized shares, 15-2214
cancellation of shares
fee for filing statement of, 15-22-121
reacquired shares, cancellation of, procedure, effect, 15-2262
redemption or purchase, cancellation of redeemable shares, procedure, effect, 15-2261
certificates representing shares
form and contents, 15-2221
fractional shares, issuance of certificates for, 15-2222
scrip, issuance for fractional shares in lieu of certificate, 15-2222
classes, division into classes authorized, 15-2214
series, issued of preferred or special classes in series, 15-2215
consideration for shares, 15-2217
money, other property, labor or services, 15-2218
payment of the consideration, 15-2218
promissory notes and future services do not constitute payment, 15-2218
convertibility of shares, limitation on provisions relating to, 15-2214
corporation's right to acquire and dispose of its own shares, 15-2205
fractional shares, issuance of certificates for, 15-2222
payment for shares
calls for payment, 15-2216
consideration for shares, 15-2217
may be money, other property, labor or services, 15-2218
default in payment, procedure for collection of amount due, 15-2216
promissory notes and future services do not constitute payment, 15-2218
preferred or special classes, authority of corporation to issue, provisions relating to, 15-2214
issuance in series, 15-2215
reacquired shares, cancellation, procedure, effect, 15-2262

BUSINESS CORPORATION ACT (Continued)
Stock (Continued)
redeemable shares—See Redemption of stock, above
scrip, issuance for fractional share in lieu of certificate, 15-2222
series of shares
fee for filing statement of establishment of series, 15-22-121
issuance of preferred or special classes in series, 15-2215
subscription for shares
calls for payment, 15-2216
default in payment, procedure for collection of amount due, 15-2216
liability of subscribers, 15-2223
treasury shares
consideration, 15-2217
voting of prohibited, 15-2231
voting of shares—See Voting powers of shareholders, below
Stockholders—See Shareholders, above
Stock rights and options, 15-2218
Subsidiary corporations, merger, 15-2268
Surplus and reserves, 15-2264
Transfer books
closing of transfer books and fixing record date, 15-2228
voting list, preparation by officer having charge of books, damages for failure to prepare list, 15-2229
Treasury shares, voting of prohibited, 15-2231
Ultra vires as a defense, 15-2206
Unauthorized assumption of corporate powers, 15-22-135
Voting powers of shareholders
amendments to articles of incorporation
class voting on amendments, when holders entitled to vote as a class, 15-2254
vote by shareholders, 15-2253
authorized vote of each outstanding share, 15-2231
corporation-owned shares, voting prohibited, 15-2231
cumulative voting authorized, 15-2231
fiduciaries, voting of shares, 15-2231
greater voting requirements in articles of incorporation to control, 15-22-132
merger or consolidation, vote of shareholders required, 15-2267
pledged shares, voting powers of shareholder or pledgee, 15-2231
proxies, 15-2231
quorum at meetings, 15-2230
receivers, voting of shares standing in name of, 15-2231
redeemable shares, when not entitled to vote, 15-2231
trust, creation of voting trust authorized, 15-2232
voting list, 15-2229
Waiver of notice requirements, 15-22-133

BUSINESS TRUSTS
Classifications of business trusts, 15-2502
Commencement of business, when authorized, 15-2504
Corporate laws, application to business trust, 15-2508
Definition, 15-2501
Domestic business trust
certificate of organization, 15-2504
definition, 15-2502
required filings with the secretary of state, 15-2504
trust agreement, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505
construction of instrument, 15-2506
terms and conditions of instrument, binding effect, 15-2[illegible]
Foreign business trusts
definition, 15-2502
license to do business in state, when issued, 15-2504
required filings with the secretary of state, 15-2504
trust agreement, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505

BUSINESS TRUSTS (Continued)
Foreign business trusts (Continued)
trust agreement (Continued)
binding effect of terms and conditions of instrument, 15-2506
construction of instrument, 15-2506
Form of association authorized, 15-2503
Powers and authority of business trusts, 15-2506
Secretary of state
certificate of organization, issuance to domestic business trust, 15-2504
copies of trust agreements, filing with secretary of state, 15-2504
amendments to trust instrument, 15-2505
license to foreign business trust to do business in state, when issued, 15-2504
Taxation of business trust, 15-2507

BUTCHERS AND MEAT PEDDLERS
Inspection and marking of hides of slaughtered cattle
emergency or custom slaughter without live inspection, 46-503
livestock sanitary board inspection in lieu of sheriff's inspection, 46-503
Meat markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Persons exempted from procuring license for having meat inspected or stamped, 46-504

BUTTER
See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

C

CAMPGROUNDS
See TOURIST CAMPS, 69-5601 to 69-5607

CAPITAL PUNISHMENT
Appeals, stay of execution, 95-2406
Execution of death sentence, procedure, 95-2303
Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
Offenses not bailable, 1972 Const., II, 21
Pregnant female, proceedings, 95-2306, 95-2307
Retention of capital punishment by electors, 1972 Const., Historical Note

CAREY LAND ACT BOARD
Fund abolished, 79-416
Money and appropriations transferred to water conservation board, 89-103.6
Powers transferred to water conservation board, 89-103.4
Records and property transferred to water conservation board, 89-103.5

CARRIERS
Common carrier contract modifying carrier's rights and duties, effect, 8-709
Motor carriers
interchange of equipment, 8-103.2
lease of power equipment, 8-103.1
lease of railroad commission certificate, 8-103.3
Pipeline carriers, 8-201 to 8-207, 8-209, 8-210—See PIPELINES
Tramway not a common carrier, 69-6615

CEMETERIES
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a) Table A
Tax exemption of property, 1972 Const., VIII, 5

CENTER FOR THE AGED
Convalescent release of patients, 80-2503

CENTER FOR THE AGED (Continued)
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
Discharge of patients, 80-2503
Industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
Location of center, 80-2501
Management and control of center, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
Purpose of center, 80-2501
Transfer of patients to and from other institutions, 80-2502
Galen state hospital, 80-1703

CENTRAL PAYROLL SYSTEM
See SALARIES, Central payroll system, 25-507.1 to 25-507.10

CERTIORARI
Real estate commission, writ of district court for appeal from, 66-1939
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

CESSPOOLS
Cleaning of cesspools, 69-5401 to 69-5408—See SANITARY LICENSEES

CHANGE OF NAMES
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

CHANGE OF VENUE
Procedure for change in civil cases, M. R. Civ. P., Rule 12(b)
payment of costs and fees by party filing complaint, 93-2908
Procedure for change in criminal cases, 95-401, 95-1710
justices' and police courts, 95-2003

CHARITABLE INSTITUTIONS AND CORPORATIONS
Institutional funds management, 86-801 to 86-809—See MANAGEMENT OF INSTITUTIONAL FUNDS

CHARITIES
Appropriations for private purposes prohibited, 1972 Const., V, 11
Economic assistance and social and rehabilitative services, provision for, 1972 Const., XII, 3
Perpetuities prohibited except for charitable purposes, 1972 Const., XIII, 6
Tax exemption for property, 1972 Const., VIII, 5

CHECKS
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

CHEESE
See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

CHILDREN AND MINORS
Abandonment of child as felony, 94-304
Abuse of children, reports required of physicians and others, 10-902
evidentiary use of report not subject to privilege, 10-905
immunity from liability of person making report, 10-904
investigation and disposition of report, 10-903
policy declaration, 10-901
Age of majority eighteen years for all purposes, 1972 Const., II, 14; 64-101
person under eighteen entitled to all rights not specifically precluded, 1972 Const., II, 15
Apprehending children and holding them in custody, 10-608.1
Assistance payments, payment to interested person other than original recipient, 71-509

References are to Title and Section numbers

CHILDREN AND MINORS (Continued)
Bartenders minimum age, 41-1135
violation as misdemeanor, 41-1136
Borrowing of money for educational expense, capacity of minors, 64-106.1
Causing, contributing to or permitting law violations by children, penalty, 10-617
Correctional facilities, establishment, control and management by department of institutions, 80-1410 to 80-1412—See STATE INSTITUTIONS, Juvenile facilities
Day care facilities, licensing and regulation, 10-801 to 10-811—See DAY CARE FACILITIES
Delinquent children
commitment to state institution, form of order, 10-612
definition, 10-602
detention of child pending hearing, procedure, 10-608.1
district youth guidance home, placement in by district judge, 10-1105
continuing jurisdiction of district court, 10-1107
department of institutions placing juvenile, 10-1109
petition by juvenile for placement in home, 10-1106
support payments required of parents, 10-1108
jury trial rights, 10-604.1
motor vehicle, dangerous operation as delinquency, 10-602
notice of apprehension of child, 10-608.1
petitions, 10-605.1
preliminary inquiry, 10-605.1
reception and evaluation center, authority to commit to, 10-611.1
temporary commitment to institution for evaluation, 10-611
Dependent and neglected children
commitment or other disposition of child, 10-509
cost of care and maintenance
hearing and order requiring parent to pay, 10-507
investigation of ability of parents to pay, 10-506
state and county payments of cost, 10-524
suspension of sentence on giving of bond by responsible person, 10-512
hearing on disposition of child, 10-504
Destruction of property by child, liability of parents, 61-112.1
amount of recovery, 61-112.2
attorney's fee, 61-112.2
Firearms, permitting use by minors prohibited, 94-3579
Galen state hospital, juvenile reception and evaluation center, 80-1704
Health information given to state department or medical association, privilege, 69-4115
Illegitimate children, support obligations of father, 93-2901-1 to 93-2901-11—See BASTARDY PROCEEDINGS
Interstate compact on juveniles
additional procedure for return of runaway juveniles, 10-1006
administrator, 10-1002
financial obligations, discharge, 10-1004
ratification, text, 10-1001
responsibilities of state departments, agencies and officers, 10-1005
supplementary agreements by compact administrator, 10-1003
Lewd and lascivious acts upon children, penalty, 94-4106
Medical or psychiatric treatment, consent to
pregnancy or venereal disease suspected, minor's consent valid, 69-6101
divulgence of information by physician, 69-6102
immunity of hospital, clinic or physician, 69-6105
negative results, consent remains valid, 69-6103
surgery not directly connected with pregnancy not included, 69-6104
psychiatric or psychological counseling, minor's consent valid, 69-6106
immunity of physician or psychologist, 69-6107
Neglect of child, report required, 10-901 to 10-905—See Abuse of children above
Newborn infants, metabolic testing required, 69-6711
administration of law, adoption of rules, 69-6712
Boulder River School to render assistance, 69-6713
definition of terms, 69-6710
results of test, persons to be advised, 69-6713
Nonsupport as felony, 94-304

CHILDREN AND MINORS (Continued)
Representation in actions by and against, M. R. Civ. P., Rule 17(c)
Service of process on minors, M. R. Civ. P., Rule 4D(2)
Unlawful operation of motor vehicle by child under 18
court learning of unlawful operation, action which may be taken after hearing or investigation, 32-21-165
exclusive jurisdiction of district court, 32-21-163
impounding of vehicle, when, 32-21-163
penalty, 32-21-163
summoning of child, 32-21-164
Workmen's compensation coverage of juveniles in delinquency prevention or rehabilitation programs, 92-411

CHILDREN'S CENTER
Commitment of child to center, records to accompany child, 80-2103
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
Discharge of child from center, 80-2104
Fishing by inmates, license not required, 26-202.1
Incorrigible child, commitment to vocational school or industrial school, 80-2105
Industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
Location of center, 80-2101
Management and control of center, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
Medical examination before commitment of child to center, 80-2103
Mentally ill or retarded child, transfer to state hospital or state training school and hospital, 80-2106
Purpose of center, 80-2101
Superintendent to manage center, 80-2102
Transfer of children to other institutions
Boulder river school and hospital, 80-2106
juvenile facilities of department of institutions, 80-2105
Warm Springs state hospital, 80-2106
Tuition payments for inmates attending Twin Bridges high school, 75-6319
University aid to children resident at center, 80-2107

CHIROPODISTS
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
compensation of board members, 66-608
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
expenses of board, payment, 66-608
legal assistance in hearings by board, 82A-1604
moneys received by board, disposition, 66-607
retention of functions by board, 82A-1605
Corporations for practice of chiropody, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108
scope of practice not enlarged, 40-4109
Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
Examination of applicants for license, 66-603
Malpractice, statute of limitations, 93-2624
Reciprocal license without examination, fee, 66-603

CHIROPRACTORS
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
continuation in office of board members, 82A-1606

References are to Title and Section numbers

CHIROPRACTORS (Continued)
Board of examiners (Continued)
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
moneys received by board, disposition and use, 66-513
per diem of board members, 66-513
report of board, 66-513
retention of functions by board, 82A-1605
Corporations for practice of chiropractic, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108
scope of practice not enlarged, 40-4109
License applicants, examination, 66-506
Malpractice, statute of limitations, 93-2624

CHURCHES
See also RELIGION
Religious corporation sole, 15-2401 to 15-2413—See RELIGIOUS CORPORATION SOLE ACT
Sanitary inspections and correction of conditions by boards of health, 69-4118

CIGARETTE SALES
Actions for enforcement of act, 51-313
Competitive pricing in good faith permitted, 51-308
Contracts in violation of law void, 51-309
Damage actions for violation of act, 51-313
Definition of terms, 51-303
Enforcement powers of board of equalization, 51-314
Hearings by board on violations of act, 51-314
Injunction to prevent violations of act, 51-313
Judicial review of board actions, 51-314
Legislative findings, 51-301
Licenses and permits, revocation or suspension for violations of act, 51-314
Penalty for violations, 51-304
Policy of state, 51-301
Price-cutting as evidence of intent to injure competitor, 51-304
Rules and regulations for enforcement of act, 51-314
Sales below cost prohibited, 51-304
clearance sales exempt, 51-307
combination sales, determination of cost in, 51-306
competitive pricing exempt, 51-308
concealment of true cost as bearing on good faith, 51-310
customary trade practices as evidence of cost, 51-310
damaged merchandise, sale exempt, 51-307
definitions of cost, 51-303
fiduciary sales exempt, 51-307
isolated transactions exempt, 51-307
judicial sales exempt, 51-307
liquidation sales exempt, 51-307
promotional merchandise not considered in cost, 51-310
purchases outside ordinary trade channels not considered in determining cost, 51-311
survey evidence, use in determining cost, 51-312
wholesalers, definition of cost in sales between, 51-305
Short title of act, 51-302
Surveys to determine lowest cost, 51-312
competitive prices, use of survey in determining, 51-308
Unlawful practices enumerated, 51-304

CITIES AND TOWNS
Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports
Aldermen
residence requirements for eligibility, 11-714
salaries, 11-725

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Alley approaches, construction or replacement by assessment without formation of special district, 11-2226.1
All-purpose exclusive tax levy, 84-4701.1 to 84-4701.6—See TAXATION, Levy of taxes, all-purpose exclusive levy
Ambulance service
establishment authorized, 69-3601
joint service authorized, 69-3601
methods of operation, 69-3602
previously existing service unaffected, 69-3603
Annexation of contiguous platted tracts or other parcels of land, procedure, 11-403
electric service in annexed area, right to provide, 70-505
water or sewer service, requiring consent to annexation as condition, 11-1001
Bond issues
limitation of actions and defenses relating to issuance of bonds, 93-2612
maximum interest rate, 79-2602
definition of terms, 79-2601
Bonds, official
adequacy of bond, determination, 6-603
amount of bonds, 6-602
commission and commission-manager governments, 6-608
companies authorized to write bonds, 6-604
competitive bids to be sought, 6-602
conditions in bond, 6-606
form of bonds, approval, 6-605
premiums, payment out of budget, 6-607
purchase by council or commissioners, persons covered, 6-601
Bridges within municipalities, construction and maintenance, 32-2902
police regulation, 32-2905
City attorney, salary, 11-729
City-county building, acquisition or construction authorized, 11-4201
bonding authority undiminished, 11-4203
contracts between city and county, 11-4202
Clerk, salary, 11-731
election duties, 23-3502, 23-3503
Commission-manager plan of government
compensation of commissioners and mayor, 11-3248
primary election for commissioners, 11-3215
Continuity in government, constitutional basis, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Contracts
advertising, letting of, 11-1202
awarding, 11-1202
division of contracts to circumvent bidding procedures prohibited, 11-1202.1
emergency contracts, when authorized, 11-1202
installment payments, 11-1202
preference to Montana bidders
federal aid projects exempt, 82-1926
percentage differential, 82-1924
provision in contracts for preference to Montana materials and labor, 82-1926
residence, definition, determination of, 82-1925, 82-1925.1
submission to electors at election, when required, 11-1202
County road machinery, use permitted, 32-2807
Decision-making process, public right of participation in, 1972 Const., II, 8
Deposit of public funds by treasurer, 16-2618
Disaster emergency tax, city-county
council meeting, 11-4303
definitions, 11-4301
determination of disaster, resolution of disaster committee, 11-4302
levy of tax to cover expenses, 11-4305
resolution stating emergency, 11-4304
surplus held in separate fund, 11-4306

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Disincorporation, 11-308 to 11-321
cessation of existence of or failure to function by governing body, 11-308
order of disincorporation, filing, effective date, 11-314
collection of amounts due corporation, county succeeding to rights of city or town, 11-320
costs and expenses, payment, 11-321
election to disincorporate, notice, 11-309
conduct of election, 11-311
form of ballot, 11-310
insufficient vote, limitation upon subsequent election, 11-312
order of disincorporation upon vote of electors, 11-313
financial statement of municipality to be certified to county commissioners, contents, 11-315
indebtedness and obligations of city or town, provision for payment, 11-317
insolvency of city or town, tax levy authorized, 11-318
indebtedness to municipality to be collected, 11-317
police court records to be transferred to nearest justice of the peace, disposition of unfinished business, 11-316
public property to be released to county commissioners, 11-316
surplus assets transferred to county general fund, 11-319
unencumbered cash to be delivered to county treasurer, disposition, 11-315
Ditches, municipal regulation, 11-4001 to 11-4006
declaration of nuisance, 11-4002
investigative powers of governing body, 11-4003
irrigation ditches exempt, 11-4006
notice to close and fill ditch, 11-4004
protective devices, owner providing, 11-4005
purpose of act, 11-4001
Elderly persons, municipal tax levy for support of activities of, 71-1701
Elections
registration of electors, 11-715
review of structure of government, time for, when required, 1972 Const., XI, 9
Employees, hours of work of salaried personnel, 59-510(2)
Establishment of local government units by law, 1972 Const., XI, 1
Examination of accounts by state examiner, 82-1008
costs reimbursed to examiner, 82-1002
Expenditures, strict accountability for, 1972 Const., VIII, 12
Fire codes, adoption authorized, 11-1102
Fire departments
fire department relief associations
contributions payable to beneficiary or estate, 11-1927.1
investment of surplus funds, 11-1914
pensions payable
disability pension, 11-1926
service pension, 11-1925
widows' and orphans' pensions, 11-1927
premium tax collected from insurers
amount of tax, 11-1919
estimates of payments into treasury fund, 11-1920
payment by state treasurer, 11-1921
risk covered by taxable premiums, 11-1919
tax levy for disability and pension funds, 11-1912
mutual aid agreements authorized, 11-1901
wages of firemen, longevity pay requirement based on statutory minimum, 11-1932.1
Fire protection in unincorporated towns
disability and insurance benefits of firemen
administration of act by industrial accident board, 11-2026
allowance and payment of claim by industrial accident board, 11-2025
benefits allowable, 11-2023
claims for compensation, filing and procedure, 11-2024
earnings of money in earmarked revenue fund, 11-2028
payment of claims, 11-2025

CITIES AND TOWNS (Continued)
Fire protection in unincorporated towns (Continued)
disability and insurance benefits of firemen (Continued)
premium tax paid into earmarked revenue fund, 11-2030
qualification for benefits, 11-2023
reports to governor by retirement system, 11-2029
surplus in compensation account, annual division among recipients, 11-2022
fire districts
change of boundaries, 11-2008
contracts with cities and towns and private services for fire protection, 11-2008
creation, 11-2008
dissolution, 11-2008
trustees, 11-2010
powers, 11-2010
fire insurance premium tax deposited into volunteer fireman's compensation fund, **amount, 11-2030**
mutual aid agreements, 11-2010
premium tax paid into earmarked revenue fund, 11-2030
training program conducted by chief, 11-2007
Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Group insurance for officers and employees, 11-1024
Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
Highways bypassing municipality, consent of governing body required, 32-1628
Highways through municipality, cost of construction and maintenance, 32-1627
Indebtedness
electors at elections concerning
persons entitled to vote, 11-2310
registration, 11-2310
extraordinary levies to pay bonded indebtedness, 84-4701.6
form and execution of bonds, 11-2316
limitation of actions and defenses relating to issuance of bonds, 93-2612
limitation on incurring, 1889 Const., XIII, 6; 1972 Const., VIII, 10
power to incur, 11-966
purposes for which indebtedness may be incurred, 11-966
use of loan proceeds for purposes specified, 1972 Const., VIII, 11
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Initiative and referendum powers extended to electors, 1972 Const., XI, 7, 8
Insurance against tort liability, participation in state plan authorized, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims against governmental entities
Intergovernmental co-operation, 1972 Const., XI, 7; 11-4101 to 11-4116; 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Investment of surplus bonds in warrants, government securities and bank deposits, 11-1310
Justice of the peace acting as police judge, compensation, 11-727
Limitation on indebtedness, 1889 Const., XIII, 6
"Local government units" defined, 1972 Const., XI, 1
Mayor
qualifications for office, 11-710
salary, 11-725
Mental health facilities, establishment by division of mental hygiene, 80-2406
Motor vehicle yards, power to regulate, 11-918
Officers of city or town
code of ethics, 1972 Const., XIII, 4
recall of elective officer under mayor-council form, 11-721.1
residence requirements, 11-713
Off-street parking facilities
acquisition and construction, power of municipality, 11-986
funding or refunding bonds, 11-3721
indenture for security of bonds, 11-3714
interest on bonds, 11-3717

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Open meetings of public agencies
legislative intent, 82-3401
meetings to be open, exceptions, 82-3402
minutes to be available for public inspection, 82-3403
Open-space land, 62-601 to 62-609—See PARKS
Optional forms of government, 1972 Const., XI, 3
Ordinances, technical codes, adoption by reference, 11-1102
Parks, donation of county land for, 16-1131
Planning and zoning—See PLANNING AND ZONING
Police department
appointment of commission in third class cities, when required, 11-1804.1
appointment of persons to do police duty who are not members of police department, authority of mayor, 11-1806
consolidation with sheriff's office in certain counties, 16-2726 to 16-2730—See COUNTIES, Department of public safety
discharge of policemen in third class city when police commission established, 11-1804.1
fingerprints taken on felony arrest, 80-2003
salary of officer withheld on failure to furnish information, 80-2004
fund for payment of officers on reserve list, 11-1823
tax levy, 11-1823
identification bureaus, assistance by state bureau in establishing, 80-2006
law enforcement teletypewriter communications committee, membership of chiefs of police, 82-3902
overtime compensation of members in cities of first and second class, 11-1832.2
pensions unassignable and exempt from process, 11-1821.1
qualifications, enumeration of qualifications of policemen, 11-1814
reserve fund, investment, 11-1829
state payments to municipalities with police departments
amount of annual payment, 11-1834
insurance premium tax as source of payments, 11-1835
retirement reserve fund, credit of payments to, 11-1836
use of funds in municipalities not subject to retirement law, 11-1837
suspension of policemen by mayor or chief of police
appeal, 11-1806
authority, 11-1806
limitation on length of suspension, 11-1806
wages of members, longevity pay requirement based on statutory minimum, 11-1832.1
Police judge, salary, 11-726
justice of the peace acting as police judge, compensation, 11-727
Post-enemy attack, continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Powers in general, 1972 Const., XI, 4
self-government powers, 1972 Const., XI, 6
Property exempt from taxation, 1972 Const., VIII, 5
Property transactions with county or political subdivision, 11-964.1, 11-964.2
counties authorized to transact, 16-1007.1, 16-1009.1
Records of fiscal transactions, destruction after period of years, 59-516
Revenue bonds
advertisement of bond issue, 11-2404
authorization of bond issue, 11-2404
definition of terms, 11-2402
election to authorize bonds discretionary with governing body, 11-2404
negotiability of bonds, 11-2404
refunding revenue bonds, terms, issue, and disposition of proceeds, 11-2414
terms of bonds, 11-2404
Review of structure of government, when required, 1972 Const., XI, 9
Road fund, sources, disposition and use, 53-122
flood control project, use for, 89-3308
Rules of civil procedure, application to special statutory proceedings, M. R. Civ. P., Rule 81(a), Table A

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Self-government charters, establishment authorized, procedure, 1972 Const., XI, 5
powers of unit adopting self-government charter, 1972 Const., XI, 6
Service of process on cities and towns, M. R. Civ. P., Rule 4D(2)
Sewer service, furnishing to industries and persons outside city, 11-1001
Sidewalks, curbs and gutters, construction without improvement district, 11-2226
Soil and water conservation districts
appointment of supervisors, 76-107
definition of municipality as "land occupier," 76-103
Sovereign immunity abolished, 1972 Const., II, 18
Special assessments, maximum interest rate, 79-2603
definition of terms, 79-2601
Special improvement districts
assessments combining area, lineal foot and lump sum bases, 11-2214
bonds and warrants
form, 11-2231
interest rate, maximum paid, 79-2602
definition of terms, 79-2601
provisions, 11-2231
redemption, 11-2231
refunding of revenue bonds, 11-2218
revenue bonds for water and sewer systems, 11-2218
signing, 11-2231
constitutional authority, 1972 Const., VIII, 5
interest on assessments, 11-2227
investment of interest and sinking fund moneys, 11-2288
lighting districts authorized, 11-2201
notice of resolution of intention, contents, persons to whom given, 11-2204
off-street parking and pedestrian malls
assessments and bonds, 11-2214.2
authority to create improvement districts, 11-2201
bonds, authority to issue, 11-2214.1
leasing of real property, 11-2214.4
payment of assessments, 11-2214.3
resolution of intention, publication and adoption, 11-2214.5
purposes for which authorized, 11-2202
revolving fund surplus, investment, 11-2272
special assessments, maximum interest paid, 79-2603
definition of terms, 79-2601
underground utility facilities, district for, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion
warrants and bonds, form, 11-2231
Strong mayor form of government authorized, 11-802.1
Subdividing and platting of land, 11-3859 to 11-3876—See PLANNING AND ZONING, Subdividing and platting of land
Taxation—See TAXATION, Cities and towns
all-purpose annual levy, 84-4701.1 to 84-4701.6
Third class cities, appointment of police commission upon request of policemen, 11-1804.1
Treasurer, salary, 11-728
Urban renewal law
"agency" defined, 11-3901
annual report of urban renewal agency, 11-3916
bidding upon disposition of real property, 11-3909
"blighted area" defined, 11-3901
blighted areas, finding of public interest in, 11-3902
bonds
bonds issued do not constitute an indebtedness within meaning of constitutional or statutory debt limitations, 11-3910
definition, 11-3901
general credit of municipality not to be pledged, 11-3910.
payment, 11-3910
power to issue, 11-3910
resolution authorized, 11-3910
sale, terms, 11-3910

References are to Title and Section numbers

CITIES AND TOWNS (Continued)
Urban renewal law (Continued)
bonds as legal investments, 11-3911
borrowing power, 11-3907
clearance and redevelopment of blighted areas, inclusion in program, 11-3904
"clerk" defined, 11-3901
contract powers of municipality, 11-3907
cooperation by other public bodies, 11-3913
definitions, 11-3901
disclosure of interest in property within area, duty of public officers, 11-3918
discrimination because of race, creed, color or national origin prohibited, 11-3917
election, submission to electors for approval of plan, 11-3906
eminent domain
compensation, 11-3908
power of municipality, 11-3908
exercise of powers by municipality itself or by agency or department or other officers, 11-3915
fair value in sales or leases by municipality, 11-3909
"federal government" defined, 11-3901
findings required before exercise of powers, 11-3905
interest, direct or indirect in project or property by public officials, commissioners or employees prohibited, 11-3918
investment of project funds, 11-3907
legislative finding and declaration of necessity for act, 11-3902
"local governing body" defined, 11-3901
"mayor" defined, 11-3901
"municipality" defined, 11-3901
"obligee" defined, 11-3901
operation and maintenance of real property, power of municipality, 11-3909
"person" defined, 11-3901
plans, powers concerning, 11-3907
powers additional and supplemental to other powers conferred by law, 11-3919
powers of municipality, enumeration, 11-3907
prevention of spread of blight into areas, inclusion in program, 11-3904
private enterprise, encouragement of, 11-3903
program for, 11-3904
property exempt from taxes, termination of exemption upon sale, lease or disposition, 11-3912
property, power of municipality to sell, lease or transfer, 11-3909
"public body" defined, 11-3901
"public officer" defined, 11-3901
purchasers or lessees of property, obligation to comply with uses specified in urban renewal plan, 11-3909
"real property" defined, 11-3901
"redevelopment" defined, 11-3901
"rehabilitation" defined, 11-3901
rehabilitation of blighted areas, inclusion in program, 11-3904
resolution of required findings, 11-3905
restrictions in instruments of conveyance to private purchaser or lessee, authority, 11-3909
short title of act, 11-3920
surveys and appraisals, power to enter buildings and property for, 11-3907
tax exemption of property, termination of exemption upon sale, lease or other disposition, 11-3912
title of purchaser, 11-3914
urban renewal agency
annual report, 11-3916
commissioners
appointment, 11-3915
expenses, 11-3916
meetings, 11-3916
removal, 11-3916
term of office, 11-3916
definition, 11-3901

CITIES AND TOWNS (Continued)
Urban renewal law (Continued)
urban renewal agency (Continued)
determination that agency shall exercise powers, 11-3915
employees, 11-3916
powers, 11-3915
"urban renewal area" defined, 11-3901
urban renewal plan
definition, 11-3901
hearing on, 11-3906
notice of hearing on, 11-3906
preparation, who may prepare, 11-3906
submission to electors at election, 11-3906
submission to planning commission of municipality, 11-3906
urban renewal project
approval by local governing body, 11-3906
definition, 11-3901
determinations required, 11-3906
modification, 11-3906
workable program, 11-3904
Warrants, investment of municipal funds in, 11-1310
Water conservation, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Water, furnishing to industries and persons outside city, 11-1001
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

CITY AND COUNTY CONSOLIDATION
Fire districts preserved, 11-3523
Firemen's disability and pension funds, rights preserved, 11-3524
Firemen, tenure, 11-3524
Police officers, tenure, 11-3518
Police reserve fund, vested rights preserved, 11-3518
Voluntary fire departments preserved, 11-3523

CIVIL DEFENSE
Continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Director's position abolished and functions transferred, 82A-1402
State civil defense agency abolished and functions transferred, 82A-1402
advisory council abolished, 82A-1404

CIVIL PROCEDURE
Administration of justice without sale, denial or delay, 1972 Const., II, 16
Attorney fees, contractual right to recovery reciprocal, 93-8601.1
Courts open to every person, 1972 Const., II, 16
Due process of law, 1972 Const., II, 17
Eminent domain, 1972 Const., II, 29
Employment injury, right of employee to redress for, 1972 Const., II, 16
Federal rules, adoption, M. R. Civ. P., Rules 1 to 86
administrative bodies, act not to affect powers concerning rules governing practice, 93-228
adoption by legislature before rules effective, 93-229
amendment of rules, procedure, M. R. Civ. P., Rule 86(a)
appendix of forms, M. R. Civ. P., Appendix of Forms
changes, amendments and additional rules, procedure for accomplishing, 93-230
citation of rules, M. R. Civ. P., Rule 85
commission
appointment, 93-222
duties, 93-222
expenses of members, 93-232
number of members, 93-222
organization, 93-233
records, 93-233
secretary-stenographer, appointment, 93-231

References are to Title and Section numbers

CIVIL PROCEDURE (Continued)
Federal rules, adoption (Continued)
commission (Continued)
selection of members, 93-223
services of research agency, power to employ, 93-231
forms applicable under rules, M. R. Civ. P., Rule 84, Appendix of Forms
local rules of practice, authority for courts to adopt so long as not in conflict with promulgated rules, 93-227
proposed rules
distribution to bench and bar for consideration and suggestions, 93-224
preparation, 93-224
purpose of act, 93-221, M. R. Civ. P., Rule 1
scope of rules, M. R. Civ. P., Rule 1
statutory proceedings, applicability of rules to, M. R. Civ. P., Rule 81(a), Table A
tentative final draft
hearing on, 93-226
submission to supreme court, 93-225
Imprisonment for debt, 1972 Const., II, 27
Local rules of practice, authority to adopt, 93-227, 93-2801-4, M. R. Civ. P., Rule 83
Poor person may sue or defend without costs, 93-8625
Rules of Appellate Civil Procedure, Title 93, Chapter 3001
Rules of Civil Procedure, Title 93, Chapter 2701
Sovereign immunity abrogated, 1972 Const., II, 18
Speedy remedy for every injury of person, property or character, 1972 Const., II, 16
Supreme court power to prescribe rules, 1972 Const., VII, 2; 93-2801-1
administrative practice rules unaffected, 93-2801-5
advisory committee, appointment, 93-2801-2
continuation of existing rules until modified, 93-2801-6
effective date of rule changes, 93-2801-7
legislative power reserved, 93-2801-8
petitions of professional associations concerning rules, 93-2801-3
proposed rules, distribution to bench and bar, 93-2801-3
scope of rules within power of court, 93-2801-1
substantive rights of litigants not to be affected, 93-2801-1
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

CIVIL RIGHTS
Constitutional provisions, 1972 Const., II
unenumerated rights not denied, impaired or disparaged, 1972 Const., II, 34
County parks, discrimination in employment prohibited, 16-4806
Criminal conviction, offender not deprived of civil or constitutional rights except as specified by sentencing judge, 95-2227
Discrimination because of race, color, sex, culture, social origin or condition, or political or religious ideas prohibited, 1972 Const., II, 4; 64-301
definition of terms, 64-302
discriminatory practices as misdemeanor, 64-303
Education, nondiscrimination in, 1972 Const., X, 7
Hospitals and facilities constructed with public funds, discrimination prohibited, 69-5313
Individual dignity, 1972 Const., II, 4
Mental health programs, discrimination in providing services prohibited, 80-2409
Newly created rights prospective and not retroactive, 1972 Const., Transition Schedule, Sec. 3
Pardon of criminal offender restoring civil rights, 95-2227

CLAIMS
Assignment of claims against state, 83-901 to 83-904

CLERK OF DISTRICT COURT
Arrest, clerk privileged from arrest, when, 95-616
Authorized actions by clerk, M. R. Civ. P., Rule 77(c)

References are to Title and Section numbers

CLERK OF DISTRICT COURT (Continued)
Fees enumerated, 25-232
naturalization fees paid to county treasurer for credit to general fund of county, 25-210
probate proceedings, 25-233
Membership in clerks' association, payment from county funds, 16-3006
Practice of law by clerk, restrictions on, 93-902
Salary to conform to schedule, 25-609.1

CLERK OF SUPREME COURT
Arrest, clerk privileged from arrest, when, 95-616
Fees chargeable by clerk, 82-503
Practice of law by clerk, restrictions on, 93-902
Salary, 25-501

CLOSE PURSUIT
Power of arrest by officers of another state, 95-619

COAL
License tax for strip coal mines, 84-1302 to 84-1304
Native coal preferred for public buildings, 82-1904.1
use of other fuels not prohibited, 82-1904.2
Pneumoconiosis as occupational disease, definitions, 92-1303, 92-1315.1—See OCCUPATIONAL DISEASE ACT, Pneumoconiosis

CODE OF ETHICS
Legislative provision of code of ethics prohibiting conflicts of interest involving legislators and other public officials, 1972 Const., XIII, 4

CODES AND LAWS
Criminal Procedure, 95-101 et seq.—See CRIMINAL PROCEDURE
Form and procedure for passage of bills, 1972 Const., V, 11—See LEGISLATURE, Bills
Replacement Volumes 1 and 9 to Revised Codes of Montana, 1947
adoption, 12-337
omissions or inaccuracies, effect, 12-338
Replacement Volumes 1, part 2, and 2, parts 1 and 2 to Revised Codes of Montana, 1947
adoption, 12-345
omissions or inaccuracies, effect, 12-346
Replacement Volumes 3 and 4 to Revised Codes of Montana, 1947
adoption, 12-339
omissions or inaccuracies, effect, 12-340
Replacement Volumes 4, part 1, and 8 to Revised Codes of Montana, 1947
adoption, 12-347
omissions or inaccuracies effect, 12-348
Replacement Volume 5 to Revised Codes of Montana, 1947
adoption, 12-343
omissions or inaccuracies, effect, 12-344
Replacement Volumes 6 and 7 to Revised Codes of Montana, 1947
adoption, 12-341
omissions or inaccuracies, effect, 12-342
Second Replacement Volume 4, part 2 to Revised Codes of Montana, 1947
adoption, 12-349
omissions or inaccuracies, effect, 12-350
Supplements and replacement volumes, control by supreme court, 12-332.1

COERCION
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

COLLEGES AND UNIVERSITIES
See also SCHOOLS
Children's center residents, university aid to, 80-2107

COLLEGES AND UNIVERSITIES (Continued)
Community colleges
annexation of territory to district, 75-8125
area requirements for district, 75-8104
borrowing power of college, 75-8122
budget adopted annually, 75-8127
sources of revenue, 75-8128
corporate powers of district, 75-8102
courses of instruction provided by district, 75-8119
definition of terms, 75-8101
degrees, restrictions on granting, 75-8126
depositories of district moneys, 75-8133
election on organization of district called by regents, 75-8106
ballot form, 75-8106
conduct of election, 75-8111
majority vote required to establish district, 75-8112
nomination of trustee candidates, 75-8108, 75-8109
notice of election, publication, 75-8110
sample ballot for trustee election, 75-8109
trustees elected at organization election, 75-8107
employment of personnel for college, 75-8120
federal and state aid, acceptance, 75-8130
financing of college, 75-8122
gifts and donations, acceptance, 75-8123
lease or sale of district property, 75-8124
name of district, 75-8102
petition for organization of district, 75-8105
examination of petition and call of election, 75-8106
population requirement for district, 75-8104
purpose of districts, 75-8101
regents, supervision of colleges by, 75-8103
retirement benefits for teachers, 75-8120
tax levy for college, 75-8122
additional levy proposition, 75-8131
adult education levy, 75-8129
county commissioners to fix levy, 75-8132
election of trustees, 75-8114
mandatory levy, 75-8128
tax valuation requirement for district, 75-8104
treasurer of county, moneys deposited with, 75-8133
trustees of district
election of trustees, 75-8114
canvass and tabulation of votes, 75-8115
first board of trustees, 75-8107
expenses of members of board, 75-8117
meetings of trustees, 75-8117
offices of trustees, 75-8113
organization meeting of trustees, 75-8113
notice of meeting, 75-8112
pecuniary interest in contracts prohibited, 75-8118
quorum of trustees, 75-8117
seal of board, 75-8117
vacancies in trustee positions, 75-8116
tuition and fees, 75-8119
Degrees, control of award by board of regents, 75-8502
Drug and alcohol abuse courses to be offered, 75-8902
consultation with and advice by dependency commission, 75-8905
purpose of requirement, 75-8901
required course for teachers, 75-8903
Eastern Montana College
gifts and donations, acceptance, 75-8425
land grant to college, acceptance and administration, 75-8427
purpose of college, 75-8423
Entomologist, appointment and qualifications, 82-804.1

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)
Institutional programs, use of university facilities and personnel in, 80-1405
Juvenile facilities of department of institutions, university aid to, 80-2213
Law enforcement academy
advisory board
abolition of board and transfer of functions, 82A-1202
composition, 75-5205
duties and powers, 75-5206
term of members, 75-5205
establishment, 75-5203
expenditure of funds for attendance of officers, lawful, 75-5208
officers in attendance at academy not to suffer loss of salary, vacation, seniority or other rights, 75-5207
persons eligible for admission, 75-5204
purpose of establishing, 75-5202
short title, 75-5201
Mineral science and technology college
assay and analysis fees, collection and deposit, 75-8608
bureau of mines and geology, establishment as department, 75-8407
director and assistants of bureau, duties, 75-8409
functions of bureau, 75-8408
strip mining functions transferred to department of natural resources, 82A-1503
purpose of college, 75-8407
Montana State University, establishment, 75-8410
agricultural experiment station, 75-8411 to 75-8411.7—See AGRICULTURAL EXPERIMENT STATION
building fees assessed against students, 75-8503.1
purposes of university, 75-8410
Montana university system
agricultural experiment station, 75-8411 to 75-8411.7—See AGRICULTURAL EXPERIMENT STATION
board of regents, composition, 1972 Const., X, 9; 75-5610 (2)
commissioner of higher education, appointment by board, 1972 Const., X, 9
governor ex officio member of board, 1972 Const., X, 9
powers and duties, 1972 Const., X, 9; 75-5617 (2)
superintendent of public instruction ex officio member of board, 1972 Const., X, 9
borrowing power of regents, 75-8504
state not obligated, 75-8505
building construction, authority of regents and governor, 82-3316
construction to be supervised by controller, 82-3317
coeducational, 75-8401
commissioner of higher education, 1972 Const., X, 9
conservation education in teacher preparatory courses, 75-8803
definition of terms, 75-8402
degrees, control by board of regents, 75-8502
domicile of students, rules for determining, 75-8703
definition of terms, 75-8702
intent, determination, 75-8704
Eastern Montana College, 75-8423 to 75-8427—See Eastern Montana College, above
eligibility for admission to units, 75-8701
endowed professorships, 75-8804
executive board for each unit, establishment and organization, 75-8510
meetings and powers of boards, 75-8511
expenditures controlled by regents, 75-8609
funds of system inviolate and guaranteed against loss or diversion, 1972 Const., X, 10
investment, 1972 Const., VIII, 13, X, 10
gifts and grants, acceptance, 75-8429
form of holding gift, 75-8610
Indians admitted without payment of fees, 75-8705
loyalty oath required of faculty members, 75-8805

References are to Title and Section numbers

COLLEGES AND UNIVERSITIES (Continued)
Montana University system (Continued)
military training, 75-8701
Federal assistance in training, 75-8802
mineral science and technology college, 75-8407 to 75-8409—See Mineral science and technology college, above
Montana State University, 75-8410 to 75-8411.7—See Montana State University, above
motor vehicle regulation at units of system, 75-8503.2
citations by agreement with city or county authorities, 75-8514
fines and penalties, assessment, 75-8503.3
name of system, prohibition of unauthorized use, 75-8404
Northern Montana College, 75-8428—See Northern Montana College, below
presidents of units, powers and duties, 75-8512
security departments, control and direction, 75-8515
regents, state board of education as, 75-8501
powers and duties of regents in general, 75-8501
research and development programs, units engaging in, 75-8801
resident students granted priority, 75-8601
domicile of student, determination, 75-8703, 75-8704
revenue-producing facilities, regents' power to purchase, construct and operate, 75-8503
borrowing power of regents, 75-8504
state not obligated, 75-8505
construction to be supervised by controller, 82-3317
prior contracts and obligations not affected, 75-8508, 75-8509
state funds, restriction on use, 75-8507
units of financing, 75-8506
security departments for units, establishment and appointment of members, 75-8513
areas within which authority exercised, 75-8513
firearms, when carried by guards, 75-8516
president to direct security department, 75-8515
traffic citations by agreement with city or county, 75-8514
sex discrimination prohibited, 75-8401
students' right of privacy, 75-8706 to 75-8711
academic and disciplinary records to be kept separate, examination by student authorized, 75-8711
covert records of student, discrimination against student prohibited, 75-8706
entry into student room, written notice required, exceptions, 75-8708
intrusions by police or officials, standards and procedures for, 75-8706
legislative intent, 75-8706
release of student records restricted, 75-8710
search or entry to be in accordance with law, 75-8709
waiver of right prohibited, 75-8707
tuition charges and fees prescribed by regents, 75-8601
domicile, determination, 75-8703, 75-8704
Indians enrolled without fees, 75-8705
waiver of nonresident tuition, 75-8601
units constituting system, 75-8403
University of Montana, 75-8405, 75-8406—See University of Montana, below
Western Montana College, 75-8424 to 75-8427—See Western Montana College, below
Northern Montana College, purposes and instruction given, 75-8428
Privileged communications between counselor, psychologist, nurse, or teacher and student, 93-701-4
Unemployment compensation coverage of employees, 87-110
University of Montana
courses given at university, 75-8406
departments of university, 75-8406
forestry school established, 75-8405
law school established, 75-8405
perpetual appropriation of income for support of university, 75-8602
purposes of university, 75-8405

COLLEGES AND UNIVERSITIES (Continued)
Western Montana College
gifts and grants to college, acceptance, 75-8426
land grant to college, acceptance and administration, 75-8427
purpose of college, 75-8424
Western regional higher educaton compact adopted, 75-4901
effective date and notice of approval, 75-4902
placement agreements negotiated by interstate commission, 75-4903
compact rights and obligations not altered, 75-4905
terms of agreements, 75-4904

COLUMBIA INTERSTATE COMPACT
Commissioners representing Montana, appointment and terms, 89-3202
compensation and reimbursement of commissioners, 89-3204
Cooperation by state officers, 89-3205
Information furnished by state officers, 89-3205
Liberal construction of compact, 89-3206
Notice to president and other governors of ratification, 89-3207
Powers granted to commission, 89-3203
Ratification, 89-3201
Supplemental nature of powers, 89-3206
Text of compact, 89-3201

COMMERCIAL PAPER
Acceleration of performance, good faith required in exercising option, 87A-1-208
Acceptance of instrument
banks' power to accept, 5-1001
certification of check as acceptance, 87A-3-411
date of acceptance of sight draft, 87A-3-410
definition, 87A-3-410
drawee's liability dependent on acceptance, 87A-3-409
engagements of acceptor with respect to payment of instrument, 87A-3-413
finality of acceptance, 87A-3-418
form of acceptance, 87A-3-410
time allowed for acceptance following presentment, 87A-3-506
variation of draft in acceptance, rights of holder, 87A-3-412
Accommodation party, rights and liabilities, 87A-3-415
Accrual of causes of action on commercial paper, 87A-3-122
Agent, effect of instrument payable to, 87A-3-117
Alteration of instrument
discharge of parties by alteration, 87A-3-407
material alteration defined, 87A-3-407
negligence contributing to alteration, unavailability of defense, 87A-3-406
unauthorized completion treated as material alteration, 87A-3-115
Alternative payees, effect of instruments, 87A-3-116
Ambiguous terms in instrument, construction, 87A-3-118
Assignment of funds not made by check or draft, 87A-3-409
Bank collections and deposits, extent to which subject to chapter, 87A-4-102
Bank, effect of instrument payable at, 87A-3-121
Bank, effect of instrument payable through, 87A-3-120
Banks' power to accept drafts, 5-1001
Bearer instruments defined, 87A-3-111
Burden of proof as to signature, defenses and due course, 87A-3-307
Certification of check, effect, 87A-3-411
Citation of Uniform Commercial Code chapter, 87A-3-101
Consideration, want or failure as defense, 87A-3-408
Conversion of instrument by refusal to pay, accept or return, 87A-3-419
Course of dealing between parties, application, 87A-1-205
Dates on instrument presumed correct, 87A-3-114
Definition of terms, 87A-3-102
"bill of exchange," 87A-3-104
"certificate of deposit," 87A-3-104
"check," 87A-3-104
"draft," 87A-3-104

COMMERCIAL PAPER (Continued)
Definition of terms (Continued)
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-3-102
negotiable instrument, 87A-3-104
"note," 87A-3-104
Demand instruments, instruments included, 87A-3-108
Description of payee in instrument, effect, 87A-3-117
Destroyed instrument, action on, 87A-3-804
Discharge of instrument
holder's right to discharge, 87A-3-301
sets of drafts, discharge by payment of any part, 87A-3-801
Discharge of parties, 87A-3-601
acceptance varying terms of draft, discharge by holder assenting to, 87A-3-412
agreement with another party effecting discharge, 87A-3-601
alteration of instrument discharging parties, 87A-3-407
cancellation of endorsement as discharge, 87A-3-605
delay in presentment, notice of dishonor or protest discharging parties, 87A-3-502
impairment of collateral effecting discharge, 87A-3-606
impairment of recourse effecting discharge, 87A-3-606
mutilation of signature effecting discharge, 87A-3-605
notice of discharge required against holder in due course, 87A-3-602
payment to holder effecting discharge, 87A-3-603
reacquisition by prior party discharging, 87A-3-601
readiness to pay as tender effecting discharge, 87A-3-604
release of party as discharge of intervening party, 87A-3-606
renunciation of rights by holder effecting discharge, 87A-3-605
satisfaction to holder effecting discharge, 87A-3-603
surrender of instrument effecting discharge, 87A-3-605
suspension of enforcement rights effecting discharge, 87A-3-606
tender of payment, extent of discharge by, 87A-3-604
underlying obligation discharged by discharge of instrument, 87A-3-802
Dishonor of instrument
action permitted on instrument or underlying obligation, 87A-3-802
acts constituting dishonor, 87A-3-507
bank making presentment by notice, dishonor following, 87A-4-210
evidence of dishonor, 87A-3-510
notice of dishonor required to charge parties on instrument, 87A-3-501
delay in notice, effect on liabilities of parties, 87A-3-502
evidence of notice, 87A-3-510
excuses for delay or failure to give notice, 87A-3-511
manner of giving notice, 87A-3-508
parties benefiting from notice, 87A-3-508
persons to whom notice given, 87A-3-508
time allowed for notice, 87A-3-508
waiver of notice, 87A-3-511
protest of dishonor
contents of protest, 87A-3-509
delay in protest, effect on liabilities of parties, 87A-3-502
excuses for delay or failure to make protest, 87A-3-511
notice of protest, construction, 93-401-22
permitted on dishonor of any instrument, 87A-3-501
required to charge parties on certain instruments, 87A-3-501
time allowed for protest, 87A-3-509
waiver of protest, 87A-3-511
rights of holder on dishonor, 87A-3-507
wrongful dishonor, bank liable for damages to customer, 87A-4-402
Drawer's engagements with respect to payment of instrument, 87A-3-413
Endorsement of instrument
ambiguous signature construed as endorsement, 87A-3-402
blank endorsement, effect, 87A-3-204
cancellation of endorsement by prior party reacquiring instrument, 87A-3-208
depositary bank supplying endorsement on behalf of customer, 87A-4-205
engagements of endorser enumerated, 87A-3-414
forged signature, when effective, 87A-3-405

COMMERCIAL PAPER (Continued)
Endorsement of instrument (Continued)
name of payee misspelled or wrong, form of endorsement required, 87A-3-203
negotiation, endorsement required for, 87A-3-202
order of liability of endorsers, 87A-3-414
paper on which endorsement written, 87A-3-202
partial assignment, endorsement operating as, 87A-3-202
"pay any bank" endorsement, effect, 87A-4-201
restrictive endorsement
effect of restrictions, 87A-3-206
intermediary bank not bound by restrictions, 87A-4-205
payor bank not bound by restrictions, 87A-4-205
terms creating restriction, 87A-3-205
special endorsement, effect, 87A-3-204
transferee's right to require endorsement, 87A-3-201
Exemptions from execution, waiver in unsecured note not enforceable, 93-5813.1
Extension terms in instrument, construction, 87A-3-118
Fiduciary, effect of instrument payable to, 87A-3-117
Foreign currency as medium of payment, 87A-3-107
Good faith required, 87A-1-203
Guarantor of payment, rights and liabilities, 87A-3-416
Holder of instrument
bulk transaction preventing holding in due course, 87A-3-302
burden of proof as to holding in due course, 87A-3-307
claims available against holder, 87A-3-305
consideration, want or failure as defense against holder, 87A-3-408
defenses available against holder in due course, 87A-3-305
defenses available against holder not in due course, 87A-3-306
discharge ineffective without notice against holder in due course, 87A-3-602
discharge of instrument, holder's right, 87A-3-301
due course holder, requirements, 87A-3-302
enforcement of payment, holder's right, 87A-3-301
judicial sale preventing holding in due course, 87A-3-302
knowledge preventing holding in due course, 87A-3-304
legal process to obtain instrument preventing holding in due course, 87A-3-302
negotiation of instrument, holder's right, 87A-3-301
nonnegotiable instrument not subject to holding in due course, 87A-3-805
notice preventing holding in due course, 87A-3-304
sets of drafts, taker of any part as holder in due course, 87A-3-801
transfer, holder's power to, 87A-3-301
value given by holder to support holding in due course, 87A-3-303
bank with security interest as holder in due course, 87A-4-209
Incomplete instrument unenforceable, 87A-3-115
Interest on obligation
rate payable in absence of specific rate, 87A-3-118
time of commencement of interest in absence of provision, 87A-3-122
International sight draft, action permitted drawee bank, 87A-3-701
Investment Securities chapter governing where applicable, 87A-8-102
Joint liability of parties on ambiguous terms in instrument, 87A-3-118
Joint payees, effect of instrument, 87A-3-116
Knowledge of purchaser preventing holding in due course, 87A-3-304
Letter of advice of international sight draft, actions permitted drawee bank, 87A-3-701
Limitation of actions, time of accrual of action, 87A-3-122
Litigation on instrument, notice to third party liable, 87A-3-803
Lost instrument, action on, 87A-3-804
Maker's engagements with respect to payment of instrument, 87A-3-413
Negligence contributing to alteration or unauthorized signature, unavailability of defense, 87A-3-406
Negotiability, requirements for, 87A-3-104
bearer instruments, 87A-3-111
collateral statements not affecting negotiability, 87A-3-112
date on instrument, effect on negotiability, 87A-3-114
definite time of payment, terms consistent with, 87A-3-109
money as medium of payment, 87A-3-107

References are to Title and Section numbers

COMMERCIAL PAPER (Continued)
Negotiability, requirements for (Continued)
mortgage securing note, effect on negotiability, 93-6010
order of designated person, instruments payable to, 87A-3-110
seal not affecting negotiability, 87A-3-113
separate agreement, effect on negotiability, 87A-3-119
sum certain, terms consistent with, 87A-3-106
unconditional promise or order, permissible terms, 87A-3-105
Negotiation of instrument
bearer instrument negotiated by delivery, 87A-3-202
breach of duty in negotiation, effect, 87A-3-207
corporation exceeding powers, effect of negotiation by, 87A-3-207
duress, effect of negotiation obtained by, 87A-3-207
endorsement, when required for negotiation, 87A-3-202
fraud, effect of negotiation obtained by, 87A-3-207
holder's right to negotiate, 87A-3-301
illegal transaction, effect of negotiation in, 87A-3-207
infant, effect of negotiation by, 87A-3-207
mistake, effect of negotiation obtained by, 87A-3-207
reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208
rescindable negotiation, effect, 87A-3-207
warranties of negotiator, 87A-3-417
bank, items negotiated through, 87A-4-207
Nonnegotiable instruments, application of chapter to, 87A-3-104, 87A-3-805
Notice to purchaser preventing holding in due course, 87A-3-304
Payment of instrument
finality of payment, 87A-3-418
holder's right to enforce payment, 87A-3-301
readiness to pay as tender of payment, 87A-3-604
tender of payment, discharge effected by, 87A-3-604
time allowed for payment following presentment, 87A-3-506
Presentment for payment or acceptance required to charge parties to instrument, 87A-3-501
bank, instrument accepted or payable at, 87A-3-504
bank making presentment by notice to party to accept or pay, 87A-4-210
conversion by refusal to pay, accept or return instrument, 87A-3-419
delay in presentment, effect on liabilities of parties, 87A-3-502
excuses for delay for failure to make presentment, 87A-3-511
exhibition of instrument required, 87A-3-505
identification and evidence of authority of person making presentment required, 87A-3-505
manner of making presentment, 87A-3-504
person to whom presentment made, 87A-3-504
place of making presentment, 87A-3-504, 87A-3-505
receipt for payment required, 87A-3-505
re-presentment after dishonor, terms permitting, 87A-3-507
surrender required on full payment, 87A-3-505
time allowed for presentment, 87A-3-503
waiver of presentment, 87A-3-511
warranties of person presenting, 87A-3-417
bank, items presented through, 87A-4-207
Protest of dishonor—See Dishonor of instrument, above
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale of goods, payment by check as conditional payment, 87A-2-511
Scope of Uniform Commercial Code chapter, 87A-3-103
Security interest in instrument, means of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
transfer of security interest, rights vested, 87A-3-201
Separate agreements affecting terms of instrument, 87A-3-119
Sets of drafts, rights and liabilities of parties on, 87A-3-801
Several liability of parties on ambiguous terms in instrument, 87A-3-118
Short title of Uniform Commercial Code chapter, 87A-3-101
Signature of instrument
agent's signature, 87A-3-403
ambiguous signature, endorsement presumed, 87A-3-402

COMMERCIAL PAPER (Continued)
Signature of instrument (Continued)
assumed name as signature, 87A-3-401
burden of proof as to signature, 87A-3-307
forged signature, when effective, 87A-3-405
fraudulently procured issuance of instrument, signature to, 87A-3-405
mark in lieu of written signature, 87A-3-401
negligence contributing to unauthorized signature, unavailability of defense, 87A-3-406
pleadings as to signatures, 87A-3-307
representative's signature, 87A-3-403
required for liability on instrument, 87A-3-401
trade name as signature, 87A-3-401
unauthorized signature, effect, 87A-3-404
Statute of frauds applicable to sale of personal property other than goods and securities, 87A-1-206
Stolen instrument, action on, 87A-3-804
Subordination of chapter to other chapters of Uniform Commercial Code, 87A-3-103
Third party liable on instrument, notice of litigation, 87A-3-803
Time allowed for required actions, 87A-1-204
Transfer of instrument
endorsement, transferee's right to enforce, 87A-3-201
holder's right to transfer, 87A-3-301
nonnegotiable instrument, application of chapter to, 87A-3-805
reacquisition by prior party, right to cancel intervening endorsements, 87A-3-208
rights vested by transfer, 87A-3-201
security interest transferred, rights vested in transferee, 87A-3-201
warranties of transferor, 87A-3-417
bank, items transferred through, 87A-4-207
Underlying obligation, discharge or suspension by taking of instrument in payment, 87A-3-802
Usage of trade, application, 87A-1-205
Waiver of statutory exemption in unsecured note not enforceable, 93-5813.1

COMMISSIONER OF HIGHER EDUCATION
Appointment, term, duties, compensation, facilities, 75-5611
Creation of office, 1972 Const., X, 9; 75-5609
Definition of office, 75-5609
Nonvoting participant at meetings of state board, 75-5615
Secretary of board of regents, 75-5612

COMMISSION ON PROBLEMS OF AGING
Abolition of commission and transfer of functions, 82A-1902
quasi-judicial functions, 82A-1907
Appointive members, qualifications, appointment and terms, 82-3502
Creation of commission, 82-3501
Functions of commission, 82-3504
Gifts and grants, acceptance and use, 82-3505
Meetings of commission, quorum, 82-3503
Members of commission, 82-3502
Officers of commission, 82-3503

COMMUNICABLE DISEASES
Definition, 69-4102
Emergency action by executive officer of state department, 69-4113
Food service establishments, diseased person may not work in or handle food, 27-619
Jail prisoners, removal to hospital, 69-4516
Quarantine by state department, penalty for violation, 69-4112
local regulation, violation, 69-4517
Reports by physicians of cases treated, 69-4514
Smallpox vaccination required for school attendance, 69-4515
Tuberculosis control, 69-4301 to 69-4317—See TUBERCULOSIS
Venereal disease, 69-4601 to 69-4617—See VENEREAL DISEASE

References are to Title and Section numbers

COMMUNICATIONS SYSTEM FOR LAW ENFORCEMENT
See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS, 82-3901 to 82-3906

COMMUTATION OF SENTENCES
Governor's power to grant commutations, 1972 Const., VI, 12

COMPLAINT
Commencement of action by filing of complaint, M. R. Civ. P., Rule 3
Criminal cases, charging offense, 95-1501 to 95-1506—See CRIMINAL PROCEDURE, Complaint
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14
Joinder of claims and remedies, M. R. Civ. P., Rule 18
Justices' courts, permissible pleadings, 93-6802.1
Service with summons, M. R. Civ. P., Rule 4D(2)

CONCEALED WEAPONS
Carrying concealed weapons not guaranteed right, 1972 Const., II, 12

CONDITIONAL SALES
See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507
Definition of term, 19-103

CONFESSIONS
Criminal cases, motions to produce or suppress confession or admission, 95-1804, 95-1805

CONFLICT OF LAWS
Foreign law, reasonable written notice of intention to raise issue concerning law of foreign country necessary, M. R. Civ. P., Rule 44.1

CONGRESS
Districts, commission for redistricting and reapportioning the state, 1972 Const., V, 14
accelerated effective date, 1972 Const., Transition Schedule, Sec. 1
Residence required for election or appointment to Congress, 23-4404

CONSERVATION
Environment, provision for protection and improvement, 1972 Const., IX, 1
Reclamation of lands, 1972 Const., IX, 2
Water rights, 1972 Const., IX, 3

CONSERVATION DISTRICTS
Assessments and funds
certification of assessment to county assessor, 76-211
collection of tax, application of general law, 76-212
depository of funds of district, 76-215
division between counties of amount to be raised by assessment, 76-205
entry of assessment on assessment roll, 76-211
estimate by supervisors of amount to be raised by assessment, 76-204
expenses covered by estimates, 76-206
general law on levy and collection, application to assessments, 76-212
investment of funds, 76-221, 76-222
levy of assessment by county commissioners, 76-209
liability of officers on official bonds, 76-212
lien of assessments, 76-231
maximum income from levy, 76-209
maximum regular assessments, 76-208
mistakes as to ownership, effect, 76-232
notice of organization of district filed with county clerk, 76-201
copies of notice transmitted to county commissioner, 76-202
payment of district moneys on order by supervisors, 76-217
"principal county" defined, 76-213
purpose of expenditures, 76-219
rate of assessment, computation, 76-210

CONSERVATION DISTRICTS (Continued)
Assessments and funds (Continued)
receipt and crediting of district funds by treasurer of principal county, 76-216
regular assessments defined, 76-207
report by treasurer to supervisors, 76-218
settlements and payment by county treasurers other than of principal county, 76-214
Bond issues authorized, 76-223
Borrowing power of districts, 76-220
Chairman of district, 76-107
Citation of act, 76-101
Corporate powers of district, 76-108
Creation of districts, notice filed, 76-201, 76-202
Division of conservation districts created, 82A-1504
functions of division, 82A-1506
Employees of districts, 76-107
Flood control measures, 76-108
Powers of district, enumeration, 76-108
Project areas, establishment, 76-224
area included in project area, 76-228
descriptions and notices, 76-227
election on creation, 76-225
expenses and financing of areas, 76-229
federal authority unaffected, 76-230
hearing on petition for establishment, 76-225
improvements, duty of supervisors to maintain, 76-233
notice of creation, 76-225
protests against project area, 76-226
State conservation commission, organization, powers and duties, 76-104
commission abolished, 82A-1507.1
transfer of functions to division, 82A-1506

CONSIDERATION
Failure as affirmative defense, M. R. Civ. P., Rule 8(c)

CONSTABLES
Fees enumerated, 25-309
Fish and game laws, enforcement by constables, 26-114

CONSTITUTION
See also separate index to 1972 Constitution, Supplement to Vol. 1, Part 1
Alteration or abolition of constitution as exclusive right of people, 1972 Const., II, 2
Amendment, 1972 Const., XIV—See CONSTITUTIONAL AMENDMENTS
Compact with United States not affected by new constitution, 1972 Const., I
Conventions for amendment of constitution, 1972 Const., XIV, 1 to 7—See CONSTITUTIONAL CONVENTIONS
Effective date of 1972 constitution, see note following Sec. 1 of Transition Schedule, Vol. 1, Part 1, Supp.
Prospective operation of new procedural or substantive rights, 1972 Const., Transition Schedule, Sec. 3
Reorganization amendments, number permitted to be submitted, 1889 Const., XIX, 9
Transition schedule, 1972 Const.
accelerated effective date, V, 6 (sessions) and V, 14 (districting and apportionment), Sec. 1
delayed effective date of V, 1 to 3 (the legislature), Sec. 2
elective and appointive officers in office on effective date of constitution, terms of, Sec. 6
general transition, Sec. 6
judicial officers in office on effective date of constitution, terms of, Sec. 4
laws, ordinances, regulations and court rules, how affected, Sec. 6
legislators, terms of, Sec. 5
public and private bonds, debts and contracts, validity continued, Sec. 6
prospective operation of new procedural or substantive rights, Sec. 3

References are to Title and Section numbers

CONSTITUTION (Continued)
Transition schedule, 1972 Const. (Continued)
rights and duties of public bodies, how affected, Sec. 6
suits, actions and rights of action, validity continued, Sec. 6

CONSTITUTIONAL AMENDMENTS
Apportionment of legislative assembly, 1889 Const., VI, 2 and 3
Attorney general's summary of proposed amendments for placement on ballot, 37-104.1
Convention, amendment by, 1972 Const., XIV, 1 to 7—See CONSTITUTIONAL CONVENTIONS
County attorney, extension of term of office, 1889 Const., VIII, 19
Initiative, amendment by, 1972 Const., XIV, 9
form for petition, 37-202
other initiative provisions not applicable, 1972 Const., III, 8
signers of petition, 1972 Const., XIV, 10
time for filing petitions, 37-203
Limitation on indebtedness of city, town, township, school district or high school district, 1889 Const., XIII, 6
Multiple amendments submitted at same election, separate voting, 1972 Const., XIV, 11
Reorganization amendments, number permitted to be submitted, 1889 Const., XIX, 9
War emergency, continuity of state and local governments, powers of legislature, 1889 Const., V, 46

CONSTITUTIONAL CONVENTIONS
Call of convention upon majority vote by electors, 1972 Const., XIV, 4
Delegates, number, qualifications, nomination, election, 1972 Const., XIV, 4
oath of delegates, 1972 Const., XIV, 6
vacancies, how filled, 1972 Const., XIV, 6
Duties of convention, 1972 Const., XIV, 7
Expenses of convention, 1972 Const., XIV, 5
Initiative, convention petitioned by, 1972 Const., XIV, 2
form for petition, 37-201
other initiative provisions not applicable, 1972 Const., III, 8
signers of petition, 1972 Const., XIV, 10
time for filing petition, 37-203
Meeting of convention, time fixed by legislature, 1972 Const., XIV, 5
Periodic submission to voters of question of holding convention, 1972 Const., XIV, 3
Referendum on question of calling unlimited convention, vote required in legislature, 1972 Const., XIV, 1
Submission of revisions, alterations or amendments to voters, 1972 Const., XIV, 7

CONSUMER LOAN ACT
Advertising, limitations on, 47-219
Annual examination of licensee, 47-216
Annual report
contents, 47-218
date required, 47-218
Appeals from order of commissioner, 47-225
Change of place of business, 47-206
"Commissioner" defined, 47-202
Confessions of judgment prohibited, 47-213
Consumer loan commissioner
abolition of office and transfer of functions, 82A-402
access to records, power, 47-226
annual examination of licensee, 47-216
appeals from, 47-225
bank examiner designated, 47-203
cease and desist orders, 47-227
investigative powers, 47-215
office created, 47-203
powers and duties vested in, 47-203
"Consumer type loan business" defined, 47-202
Contents of annual report required of licensee, 47-218

References are to Title and Section numbers

CONSUMER LOAN ACT (Continued)
Contract or statement of contents
copy to be furnished borrower, 47-212
required contents, 47-212
Contracts of loan violating act, effect, 47-204
Definitions, 47-202
Exemptions from act, 47-204
Fee for annual examination of licensee, 47-216
First installment payment, date for, 47-211
Injunctions, power, 47-227
Installment payments, time period for, 47-211
Instruments containing blanks prohibited, exception, 47-213
Insurance required of borrower, restrictions and limitations on, 47-214
Interest charged, maximum, 47-204
Investigations, 47-215
License
definition, 47-202
denial, 47-207
fee, 47-206
fee for annual examination of licensee, 47-216
fee for renewal, 47-209
issuance, 47-207
liability of licensee not affected by surrender of license, 47-221
license year, 47-206
notifying applicant of denial of license, 47-207
operating without, penalty, 47-228
pre-existing lawful contracts not affected by surrender, revocation or expiration of license, 47-222
reinstatement, 47-224
renewal, 47-209
required, 47-206
supplementary license for loans in excess of $1000, 47-205
surrender of license by licensee, 47-221
suspension or revocation
hearing, 47-223
notice, 47-223
reinstatement, when, 47-224
"Licensee" defined, 47-202
Maximum loans by licensee, 47-205
Penalties for violations of act, 47-228
Period of time licensee required to preserve records, 47-217
"Person" defined, 47-202
Place of business
change, effect on license, 47-206
conduct of other business in same office, 47-208
license required for, 47-206
Rates and charges
additional charge, default or extension agreement, 47-210
excess charges, effect, 47-210
loans exceeding $1000, permissible charges on, 47-205
maximum rate of charge, 47-210
penalty for violation, 47-228
permissible rates, 47-210
recording fees, 47-210
refunds, 47-210
Receipt, licensee required to give, 47-212
Receivers, appointment for licensees, 47-227
Records, access of commissioner to, 47-226
Records required of licensee, 47-217
Repayment of loan in full, duty of licensee upon, 47-212.
Rules and regulations, 47-203
Scope of act, 47-204
Secured transactions, application of chapter to, 87A-9-203
Short title, 47-201

CONSUMER LOAN ACT (Continued)
Time period for repayment, limitations on, 47-211
Wage assignments, 47-220

CONSUMER PROTECTION
Corporate practices, laws for protection and education of people, 1972 Const., XIII, 1
Utility companies, consumer counsel to represent consumer interests before public service commission, 1972 Const., XIII, 2

CONTAGIOUS DISEASES
See COMMUNICABLE DISEASES

CONTEMPT OF COURT
Habeas corpus, refusal to obey writ, 95-2706
Judgment or order, disobedience, M. R. Civ. P., Rule 70
Subpoena, failure to obey, M. R. Civ. P., Rule 45(f)

CONTINUITY OF GOVERNMENT
Post-attack continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management

CONTRACEPTIVES
Advertising, limitations upon, 94-3621
Exemptions from law, 94-3620
Illegally held stock subject to seizure, 94-3622
Personal, collective or vending machine distribution prohibited, 94-3620
Violation as misdemeanor, punishment, 94-3623

CONTRACTORS
Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623

CONTRACTS
Actions against state, law not modified by Uniform Commercial Code, 87A-10-103
Assignment of contract rights, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Capacity to contract
education, minors' capacity to borrow for, 64-106.1
Uniform Commercial Code supplemented by general principles, 87A-1-103
Corporations, law imposing new liability prohibited, 1972 Const., XIII, 1
Impairing obligation of contracts, law prohibited, 1972 Const., II, 31
Statute of frauds, 13-606—See STATUTE OF FRAUDS

CONTRIBUTORY NEGLIGENCE
Affirmative defense, M. R. Civ. P., Rule 8(c)

COOPERATIVE ASSOCIATIONS
Amendment of articles, 14-204
Articles of incorporation, filing, 14-201
Certificate of incorporation, issuance, 14-204
Meetings of stockholders, 14-203
Merger or consolidation, plan, procedure, effective date, 14-216
limitation of actions to invalidate merger or consolidation, 14-216 (7)
rights and duties of new or surviving association, 14-216 (6)
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Sale or disposition of assets, stockholder vote required, 14-216 (5)
limitation of actions to invalidate sale, 14-216 (7)
Unclaimed distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

CO-OPERATIVE EXTENSION SERVICE
Entomologist's and apiarist's functions transferred to service, 82A-502
Fertilizer education and experimental programs, 3-1731
assessments allocated to support of program, 3-1730

COOPERATIVE MARKETING ASSOCIATIONS
Exemption from antitrust laws, 14-417.1
Fees for filing of articles and issuance of certificate, 14-422

CO-ORDINATE SYSTEM
Adoption of Coast and Geodetic Survey system, 67-2011
Documents, maps and reports, use of co-ordinates in, 67-2017
Interzonal tracts, description, 67-2014
Proximity to triangulation or traverse station required for recording of description, 67-2016
Public land surveys prevail over co-ordinate system, 67-2018
Purchasers and mortgagees not required to rely on co-ordinate system, 67-2019
Technical description of system and zones, 67-2015
Triangulation and traverse stations, incorporation into system, 67-2015
X- and y-co-ordinates, description and use, 67-2013
Zones, division of state into, 67-2011
designation of zonal systems, 67-2012
technical description of zones, 67-2015

CORAM NOBIS
Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing

CORONER
See COUNTY CORONER, 95-801 to 95-814

CORPORATIONS
Appropriation for private association or corporation prohibited, 1972 Const., V, 11
Business Corporation Act, 15-2201 to 15-22-140—See BUSINESS CORPORATION ACT
Charters granted, modified or dissolved in pursuance of general law, 1972 Const., XIII, 1
Consumer protection laws to be provided, 1972 Const., XIII, 1
Criminal procedure, offenses committed by corporations, issuance of summons, 95-615
Development Credit Corporation Act, 15-2601 to 15-2618—See DEVELOPMENT CREDIT CORPORATION ACT
Fees payable to secretary of state for filing and issuance of papers, 25-102
Insurance holding companies act, 40-5501 to 40-5508—See INSURANCE, Holding companies
License tax—See TAXATION, Corporation license tax
Nonprofit corporations, 15-2301 to 15-2397—See NONPROFIT CORPORATION ACT
Professional corporations, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Religious Corporation Sole Act, 15-2401 to 15-2402—See RELIGIOUS CORPORATION SOLE ACT
Retrospective law imposing new liability prohibited, 1972 Const., XIII, 1
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Securities registration, 15-2001 to 15-2025—See SECURITIES REGISTRATION
Service of process on corporation, M. R. Civ. P., Rule 4D(2)
Shareholders' derivative actions, allegations required, M. R. Civ. P., Rule 23(b)
Special privileges, franchises or immunities prohibited, 1972 Const., II, 31
Stock, issuance, transfer, and registration, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
fiduciary transfers, 15-652 to 15-662—See INVESTMENT SECURITIES, Fiduciary transfers
Unclaimed stock or distributions, when presumed abandoned, 67-2205—See also PROPERTY, Unclaimed property

COSMETICS
See FOOD AND DRUGS, Food, Drug and Cosmetic Act, 27-701 to 27-723

COSMETOLOGY
Examining board renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
compensation of board members, 66-809
composition of board, terms of members, 82A-1602.8
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
moneys received by board, deposit and use, 66-809
retention of functions by board, 82A-1605
Fees payable by licensees and applicants, 66-815
Injunctions, 66-817
Licenses to teach, renewal requirements, 66-816

COSTS
Attorney fees, contractual right to recovery reciprocal, 93-8601.1
Judgment to provide for costs, M. R. Civ. P., Rule 54(d)
Offer of judgment before trial, effect on costs, M. R. Civ. P., Rule 68
Poor person may sue or defend without cost, 93-8625
Recommencement of previously dismissed action, M. R. Civ. P., Rule 41(d)

COUNTERCLAIM
Addition of parties, M. R. Civ. P., Rule 13(h)
Assignee bringing action, claims available against, 93-3403
Compulsory counterclaim, M. R. Civ. P., Rule 13(a)
Dismissal of counterclaim, M. R. Civ. P., Rule 41(c)
Exceeding opposing claim permitted, M. R. Civ. P., Rule 13(c)
Joinder of claims and remedies, M. R. Civ. P., Rule 18
Justices' courts, permissible pleadings, 93-6802.1
Omitted counterclaim, pleading by amendment, M. R. Civ. P., Rule 13(f)
Permissive counterclaims, M. R. Civ. P., Rule 13(b)
Separate trial and judgment permitted, M. R. Civ. P., Rule 13(i)
State and public agencies, right to counterclaim against not enlarged, M. R. Civ. P., Rule 13(d)
Supplemental pleading of claim arising or acquired after original pleading, M. R. Civ. P., Rule 13(e)
Third party brought in by plaintiff, M. R. Civ. P., Rule 14(b)
Trustee bringing action, claims available against, 93-3403

COUNTIES
Airports, establishment, 1-801 to 1-803—See AERONAUTICS, City and county establishment of airports
Alternative forms of government authorized, 1972 Const., XI, 3; 16-5001
adoption of optional form by voters, 16-5004
actions or proceedings performed or pending unaffected, 16-5006
effective date, 16-5004
elected officials to serve for remainder of terms, assignment of different duties authorized, 16-5004
rules and regulations to remain in effect until amended or rescinded, 16-5006
transfer of powers, 16-5006
county commissioner form of government, definition, appointment of officials, organization, 16-5015
authorization, 16-5002
county commissioners to be elected under any optional form, 16-5007
administration of oaths authorized, 16-5011
chairman, election, 16-5011
election at large, change in number, terms of office, 16-5008
election at large or by district, 16-5007 (1)
election by districts, number, requirement, 16-5009
majority vote required for action, 16-5010

References are to Title and Section numbers

COUNTIES (Continued)
Alternative forms of government (Continued)
county commissioners to be elected (Continued)
meetings and records to be public, 16-5010
number of commissioners, 16-5007 (2), 16-5008
officers and employees of county, compensation to be established, 16-5019
organization into board, 16-5011
powers of county vested in board of county commissioner, 16-5012
rules, 16-5010
specific powers and duties, 16-5013
disapproval by voters, limitation upon new referendum, 16-5004
discontinuance of optional form, election, procedure, 16-5005
elected county executive form of government, 16-5017
absence or disability of executive, performance of duties during, 16-5018
authorization, 16-5002
compensation, 16-5019
election of county executive, 16-5017 (1)
powers and duties of county executive, 16-5017 (2), (3)
elected county official form of government, definition, organization, modification, 16-5014
initiation by county commissioners or upon petition of electors, 16-5003
manager form of government, appointment, designation and duties of manager, 16-5016
absence or disability, performance of duties during, 16-5018
authorization, 16-5002
compensation, 16-5019
specific forms of government included, 16-5002
submission of question at regular or special election, 16-5003
adoption or disapproval by majority of votes, 16-5004
form of submission, 16-5003
majority vote required for adoption, 16-5004
notice of referendum to be published, 16-5003
resolution of county commissioners, 16-5003
two or more forms of government submitted, primary election required, 16-5003
Ambulance service
establishment authorized, 69-3601
joint service authorized, 69-3601
methods of operation, 69-3602
previously existing service unaffected, 69-3603
Boarding homes for aged persons
lease of county property for home, 16-1036
operation of home by county, 16-1037
services provided at county-operated home, 16-1038
Bond issues
amortization bonds, exchange, 16-2046
earnings of sinking funds investments, disposition, 16-2001
election required for issuance, 16-2021
canvass of election returns, 16-2028
petition for election, form and contents, 16-2022
registration of voters for election, 16-2026
flood control costs, bonds issued to pay, 89-3312
interest rate, maximum paid, 79-2602
definition of terms, 79-2601
investment of sinking funds, 16-2001, 16-2044
use of interest to complete project, 16-2041
limitation of actions and defenses relating to issuance of bonds, 93-2612
limitation on amount of bond issues, 16-2010
purposes for which issues authorized, 16-2008
repurchase of bonds from sinking fund moneys, 16-2044
rescission of authority for issue, 16-2028
resolution for issuance, 16-2028
road and bridge bonds, 32-3801 to 32-3806—See HIGHWAYS, BRIDGES AND FERRIES, County bonds
sale of bonds, 16-2032
types of bonds permitted, 16-2012

References are to Title and Section numbers

COUNTIES (Continued)
Bonds of officers, 6-203 to 6-209—See BONDS AND UNDERTAKINGS
Boundaries of counties deemed those existing in 1972, 1972 Const., XI, 2
change of boundary or county seat, 1972 Const., XI, 2
Budgets
adoption of budget, 16-1904
emergency expenditures, provision for, 16-1907
state examiner, functions transferred, 82A-903
tax levy, fixing, 16-1904
City and county consolidation—See CITY AND COUNTY CONSOLIDATION
City-county building, acquisition or construction authorized, 11-4201
bonding authority undiminished, 11-4203
contracts between city and county, 11-4202
Code of ethics for officers and employees, 1972 Const., XIII, 4
Commission for management of civic centers, youth centers, museums, parks, hospitals, etc., 16-1008A
Consolidation of offices in one or more counties, 1972 Const., XI, 3; 16-2501 to 16-2507
consolidation of offices without petition authorized, 16-2504
deputies and personnel of consolidated office, 16-2507
hearing required, notice, contents, 16-2502
conduct of hearing, 16-2503
joint hearings by commissioners of two or more counties, 16-2502.1
order of commissioner, 16-2503
initiation by county commissioners, resolutions of intent required, 16-2501.1
order of consolidation, publication, 16-2505
petition of taxpayers, contents, signatures required, 16-2501
examination of petition by county commissioners, 16-2502
salary and bond of officer holding consolidated office, 16-2507
Continuity in government after enemy attack, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
County buildings and improvements, erection and management, 16-1008A
County hospital, 16-1008A
joint hospitals authorized, 16-1040
definition of terms, 16-1039
terms of agreement, 16-1041
County seats, change of, 1972 Const., XI, 2
Curfews for minors, 16-1182 to 16-1184
Debt limitations established by legislature, 1972 Const., VIII, 10
Decision making process, public right of participation in, 1972 Const., II, 8
Department of public safety in lieu of police departments and sheriff's office authorized in certain counties, 16-2726 to 16-2730
commission to supervise department, selection and number of members, 16-2726
officers, patrolmen and deputies, powers and duties, 16-2728
process returns, designation of director, 16-2730
officers, patrolmen and deputy sheriffs, designation as deputy sheriff, 16-2730
salaries of director and employees to be established by commission, minimum, 16-2729
sheriff as director of department, 16-2727
powers and duties, 16-2728
Deposit of funds by treasurer, 16-2618
Disaster emergency tax, city-county
board of commissioners meeting, 11-4303
definitions, 11-4301
determination of disaster, resolution of disaster committee, 11-4302
levy of tax to cover expenses, 11-4305
resolutions stating emergency, 11-4304
surplus held in separate fund, 11-4306
Elderly persons, county tax levy for support of activities of, 71-1701
Employees, hours of work of salaried personnel, 59-510(2)
Establishment of local government units by law, 1972 Const., XI, 1
Examination of accounts, reimbursement of costs, 82-1002
Expenditures, strict accountability for, 1972 Const., VIII, 12
Federal funds received under flood control act, use, 79-2101, 79-2102

COUNTIES (Continued)
Flood control, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Group insurance for officers and employees, 11-1024
Health, board of, 69-4501 to 69-4509—See HEALTH, LOCAL BOARDS OF
Hospitals constructed by joint action of two or more counties, 69-5312
Improvement districts for road construction, 32-3101 to 32-3131—See HIGHWAYS, BRIDGES AND FERRIES, Local improvement districts
Indemnity insurance premiums, payment from county funds, 16-1001
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Initiative and referendum, 1972 Const., XI, 8; 37-301 to 37-311
ballot form, 37-308
canvassing election vote, 37-308
co-operative measures required by people, 1972 Const., XI, 7
effective date of measure accepted by electors, 37-308
effective date of resolutions, 37-303
election at which initiative petition submitted, 37-302
filing of petition with county clerk, 37-301
forms of petitions and proceedings to conform to state law, exceptions, 37-311
judicial determination of validity of petition and ordinance, 37-301
measures required under other laws to be submitted to electors, 37-310
passage of resolution, submission to people not required, exception, 37-301
petition to initiate, amend or repeal county resolution, signatures required, 37-301
presentation of petition to board, 37-301
proclamation of result of election, 37-308
proclamation setting forth measure and date of election, issuance, publication, posting, 37-307
qualifications of electors, 37-309
re-enactment of resolution, initiative to procure, 37-301
referendum petition, time of filing, signatures, contents, 37-304
election at which referred measure submitted, 37-305, 37-306
repeal of resolution by electors, limitation upon re-enactment, 37-301
similar resolution enacted, judicial determination of material change, 37-301
special election ordered by commissioners, 37-306
submission of measure at general election, 37-306
submission of proposed resolution to people, when required, 37-301
Insurance against tort liability, participation in state plan authorized, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims against governmental entities
sovereign immunity abolished, 1972 Const., II, 18
Intergovernmental co-operation, 1972 Const., XI, 7; 11-4101 to 11-4110; 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Joint county youth guidance centers, 16-1008B
Leases of county property, 16-1030
License proceeds, disposition, 84-2708
Loan proceeds used only for purposes specified, 1972 Const., VIII, 11
"Local government units" defined, 1972 Const., XI, 1
Mineral reservations in conveyance of property, validation, 16-1122.1
Mosquito control districts
advisory committee abolished, 82A-305
annual reports of board, 16-4209
department of health and environmental sciences to advise county commissioners, 16-4209
Motor vehicle license fund, sources, disposition and use, 53-122
Nursing home for aged persons
joint institutions authorized, 16-1040
definition of terms, 16-1039
terms of contract between counties, 16-1041
lease of county property for home, 16-1036
operation of home by county, 16-1037
services provided at county-operated home, 16-1038
Open meetings of public agencies
legislative intent, 82-3401
meetings to be open, exceptions, 82-3402
minutes to be available for public inspection, 82-3403

References are to Title and Section numbers

COUNTIES (Continued)
Optional forms of government, 1972 Const., XI, 3; 16-5001 to 16-5019—See Alternative forms of government, above
Photostatic or mechanical processes for records—See RECORDING
Planning and zoning—See PLANNING AND ZONING
Powers generally, 1972 Const., XI, 4
  self-government powers, 1972 Const., XI, 6
Printing, County Printing Commission Act, 16-1225 to 16-1233
  contract for county printing, duty of county commissioners, 16-1230
    competitive bids to be called for by commissioners, 16-1232
    contractor's bond, 16-1231
    letting of contracts at less than maximum prices, 16-1232
    subletting contract, 16-1231
  county fairs and expositions, exemption from act, 16-1233
  county printing commission, establishment of, 16-1227
    annual meeting, 16-1227
    compensation of members, 16-1228
    continuation in department of intergovernmental relations, change of name, 82A-904
    members appointed by governor, terms of office, 16-1227
    powers and duties of commission, 16-1226, 16-1229
  purpose of act, 16-1226
  rates, power and duty of county printing commission to set maximum prices, 16-1226
  short title, 16-1225
Property exempt from taxation, 1972 Const., VIII, 5
Property, prior dispositions validated, 16-1510 to 16-1514
Property transactions with cities or towns, 16-1007.1, 16-1009.1
  cities or towns authorized to transact, 11-964.1, 11-964.2
Public camping and recreational park, appropriations for, 62-102
Public defender's office, authority to establish, 95-1006
Public hospital districts
  funds, receipt and disbursement, 16-4310
  "hospital facilities" defined, 16-4301.1
Purchases and contracts
  advertising for bids, when required, 16-1803
  division of contracts to circumvent bidding procedures prohibited, 16-1803.1
  preference to Montana bidders, 82-1924
    federal aid projects exempt, 82-1926
    provisions in contract for preference to Montana materials and labor, 82-1926
    residence, definition, determination of, 82-1925, 82-1925.1
Records, destruction after period of years, 59-516
Review of structure of government, when required, 1972 Const., XI, 9
Road fund, allotment from state land equalization payments, 81-1120
Road fund, use for flood control projects, 89-3308
Royalty reservations in conveyance of property, validation, 16-1122.1
Rural improvement districts
  assessments
    interest on assessments, maximum rate, 79-2603
      definition of terms, 79-2601
    lighting systems, assessments for, 16-1629
  bond issues, maximum interest paid, 79-2602
    definition of terms, 79-2601
  cancellation of record of extinguished liability account, 16-1638
  districts including more than one county
    areas includable in district, 16-1605.1
    trustees to administer district
      number of trustees, 16-1605.2
      powers of trustee, 16-1605.4
      terms of office of trustee, 16-1605.3
      vacancies in office, 16-1605.3
  ditch protection devices, 16-1601(1)
  form of warrants and bonds, 16-1620

COUNTIES (Continued)
Rural improvement districts (Continued)
"improvements" defined, 16-1626
lighting systems
apportionment of costs, 16-1629
maintenance, 16-1629
purchase contracts entered by county commissioners, 16-1607
purchase of property authorized, 16-1601(2)
sale of bonds and warrants, 16-1620
"work" defined, 16-1626
Salaries of county officers, 25-605
Self-government charters, establishment authorized, procedure, 1972 Const., XI, 5
powers of unit adopting self-government charter, 1972 Const., XI, 6
Service of process on counties, M. R. Civ. P., Rule 4D(2)
Sovereign immunity abolished, 1972 Const., II, 18
insurance plan, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims
Special improvement districts authorized, 1972 Const., VIII, 5
State land equalization payments, 81-1115 to 81-1121—See STATE LANDS, Equalization payments to counties
Subdividing and platting of land, 11-3859 to 11-3872—See PLANNING AND ZONING, Subdividing and platting of land
Surplus funds of county or school district, investment, 16-2050
Taxation
appeal procedures for taxpayer grievances, 1972 Const., VIII, 7
elderly persons, levy to support activities of, 71-1701
flood control indebtedness, levy to pay, 89-3312
levy for county purposes, 16-1015
property exempt from taxation, 1972 Const., VIII, 5
strict accountability for revenue received, 1972 Const., VIII, 12
Water conservation, 89-3301 to 89-3313—See FLOOD CONTROL AND WATER CONSERVATION
Weed control districts, creation of, 16-1709.1
county and municipal land and public ways, control on, 16-1719
Weed control embargo, proclamation by governor, 16-1708
fines and inspection fees, disposition, 16-1708.3
rules and regulations for enforcement prescribed by commissioner, 16-1708.1
violations of embargo, penalty, 16-1708.2
Zoning districts, 16-4701 to 16-4710—See PLANNING AND ZONING, County zoning districts

COUNTY ASSESSOR
Salary, conformity to schedule required, 25-609.1
Schools and meetings of county assessors and appraisers conducted by state, 84-708
State land equalization payments to counties, duties, 81-1115 to 81-1121

COUNTY ATTORNEY
Coroner's inquest, duties, 95-803
Election, qualifications, term of office and salary, 1889 Const., VIII, 19
Fire districts, representation, 16-3101
Health laws, enforcement by attorney, 69-4111
Labeling of paint and paint products, violations, duties, 3-1515
Medical practitioner unlawfully dealing in drugs, proceedings against, 27-905
Salary, conformity to schedule required, 25-609.1
School officials, legal assistance to, 75-8305
Securities act, enforcement duties, 15-2021
Training co-ordinator for county attorneys created, 82-421
appointment, 82-422
functions, 82-423

COUNTY AUDITOR
Counties in which office exists, 16-3201
Oath of office, 16-3204

References are to Title and Section numbers

COUNTY CLERKS

Associations and organizations of clerks
  memberships, payment for, 16-2926
  travel expense to attend meetings, 25-508
Fees, enumeration, 25-231
Indexes to be maintained by clerks, 16-2905
Practice of law by clerk, restrictions on, 93-902
Salaries, conformity to schedule required, 25-609.1
Seed lien records, filing and retention, 16-2922
  destruction of records, when allowed, 16-2923
Threshers' lien records, filing and retention, 16-2922
  destruction of records, when allowed, 16-2923

COUNTY COMMISSIONERS

Cancellation of record of extinguished liability accounts, 16-1638
Dog licensing, 16-4601 to 16-4615—See DOGS
Erection and management of county buildings, 16-1008A
Extra sessions, 16-910
Fire protection in unincorporated areas
  fire districts
    annexation, 11-2008
    contracts with cities, towns and private companies for service, 11-2008
    creation, 11-2008
    dissolution, 11-2008
    division, 11-2008
    tax levy for, 11-2008
    trustees, 11-2010
  fire insurance premium tax deposited into volunteer fireman's compensation fund, amount, 11-2030
Indemnity insurance premiums, payment from county funds, 16-1001
Leases of county property, 16-1030
Meetings, 16-910
Optional forms of government, 1972 Const., XI, 3
Parks, donation of land to state, municipality or federal government for park, 16-1131
Personnel, employment by board authorized, 16-913
Post-enemy-attack continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Tax levy for construction, maintenance and repair of public ferries, 32-1518
Tax levy for county purposes, 16-1015

COUNTY CORONER

Autopsies, when authorized, 95-802
  liability of mortuary or physician limited, 95-813
Death or stillbirth by other than natural causes, duty to make investigation, 95-801
Deputy coroners, appointment authorized, 95-814
Inquests
  county attorney to request and give aid and assistance, 95-803
  definition, 95-803
  jurors, number summoned, jurors to be sworn, 95-803, 95-804
  public proceedings required, 95-809
  recording and transcribing proceedings, payment of expenses, 95-808
  testimony of witnesses, writing required, filing, 95-508
  verdict of jury, writing required, contents, 95-807
  when coroner to hold inquest, 95-803
  witnesses, subpoena of, examination, 95-805
    compelling attendance of witness, 95-806
    writing and filing of testimony, 95-808
Jurisdiction of coroner, 95-812
Laboratory facilities, provision and payment for, 95-814
Notice to law enforcement agencies by coroner, when required, 95-801
Property found on body, disposition of, 95-810
Register required, contents, 95-811
Reports to coroner, when required, 95-801
Technical and clerical assistance, provision and payment for, 95-814

COUNTY SUPERINTENDENT OF SCHOOLS
Annual financial report, publication, 75-5807
Annual report to state superintendent, 75-5809
Appeals to county superintendent from school trustees, 75-5811
Appeals to state superintendent from county superintendent, 75-5709
Definition of term used throughout title, 75-5801
Election by voters of county, 75-5802
Employment and salary of deputies and assistants, 75-5804
Legal assistance by county attorney, 75-8305
Oath of office, 75-5803
  time of taking oath, 75-8304
Oaths, administraton to trustees, 75-5807
Office space and supplies provided by county commissioners, 75-5804
Powers and duties in general, 75-5805
  ex officio duties with boards and committees, 75-5806
Preservation of records, reports and supplies, 75-5807
Qualifications for office, 75-5802
Salary, conformity to schedule required, 25-609.1
Sale of goods or services to school district as misdemeanor, penalty, 75-8303
State superintendent to advise and meet with county superintendents, 75-5706
Teachers, advice and direction to, 75-5808
Term of office, 75-5803
Traveling expenses paid from general fund, 75-5804
Trustees' meetings, holding, 75-5807
  consultation with trustees, 75-5808
Vacancies in office, filling, 75-5803
Visitation of schools, 75-5808

COUNTY SURVEYOR
Plat books showing roads to be prepared by surveyor, 32-2803

COUNTY TREASURER
Convention travel expense and per diem allowance, 25-508 (6)
Deposits of public funds, 16-2618
Investment of public funds in government securities, 16-2618
Membership in and co-operation with associations and organizations of county treasurers authorized, 16-2627
Salary, conformity to schedule required, 25-609.1

COUNTY WATER AND SEWER DISTRICTS
Bonded indebtedness, vote required, 16-4522
Combined elections authorized, 16-4535
Consolidation of districts, petition and procedure, 16-4531
Elections covered by general law, 16-4508
Sewer service charges, payment of operating expenses, 16-4526
Water and sewer rates, 16-4525

COURTS
Administration of justice without sale, denial or delay, 1972 Const., II, 16
Arrest, officers privileged from arrest, 95-616
Criminal procedure, definition, 95-205
Judges' retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system
Judicial districts, 1972 Const., VII, 6
Judicial standards commission, 1972 Const., VII, 11
Jurisdiction of persons, M. R. Civ. P., Rules 4A, 4B
Open to every person, 1972 Const., II, 16
Other courts provided by law, judicial power vested in, 1972 Const., VII, 1
Separation of powers, 1972 Const., III, 1
Speedy remedy afforded for every injury of person, property, or character, 1972 Const., II, 16

CREDIT CARDS
Violations involving credit cards, 94-1823 to 94-1830—See CRIMINAL OFFENSES, Credit device violations

References are to Title and Section numbers

CREDIT UNIONS

Accounts excluded from chapter on secured transactions, 87A-9-104
Articles of incorporation
  approval by supervisor of credit unions required, 14-133
  certified copy as prima facie evidence of facts stated, 14-134
  contents of articles, 14-133
  fees for filing and recording, 14-155
  filing with secretary of state, 14-133
  form prepared by supervisor of credit unions, 14-136
Banks exempt from provisions of chapter, 14-157
Board of directors
  compensation of directors prohibited, 14-141
  composition of board, 14-141
  election and terms of directors, 14-141
  loans to directors, restrictions on, 14-148
  meetings, 14-143
  powers and duties, 14-143
Bonds required of officers, 14-152
Borrowing power, 14-147
Building and loan associations exempt from provisions of act, 14-157
Bylaws, form, approval, and amendment, 14-136
Certificate of incorporation, issuance, 14-133
  evidence of corporate character and capacity, 14-135
  fees for issuance, 14-155
Change in place of business, 14-154
Citation of act, 14-130
Conversion to or from federal credit union, 14-156
Credit committee
  compensation of members prohibited, 14-141
  composition of committee, 14-141
  election and terms of members, 14-141
  loans to committee members, restrictions on, 14-148
  powers and duties, 14-144
Definition of terms, 14-131
Destruction of records of liquidated credit union, 14-152
Dissolution of credit unions, 14-152
  fee for filing certificate, 14-155
Dividends on earnings, 14-150
  reserves required before dividends paid, 14-149
Evidence of corporate character and capacity, 14-135
Examination of books
  state examiner's examination, fee, 5-910
  supervisor of credit unions, examination by, 14-132
  supervisory committee examination, 14-145
Executive committee, creation and powers, 14-143
Expulsion of member, procedure, 14-151
Federal credit union, conversion to or from, 14-156
Fees assessed for examinations, 14-132
  disposition of fees, 14-155
  state examiner's fee, 5-910
Fiscal year, 14-140
Incorporation of credit union, procedure, 14-133
Interest chargeable on loans, 14-146
Joint tenancy in shares, 14-139
Legislative power to amend or appeal reserved, 14-153
Liquidation by state supervisor, 14-152
Loans to members
  application for loan, form, 14-144
  approval by credit committee required, 14-144
  directors and committee members, restrictions on loans to, 14-148
  endorsement by director or supervisory or credit committee member prohibited, 14-148
  interest rate chargeable, 14-146
  purposes for which authorized, 14-148

References are to Title and Section numbers

CREDIT UNIONS (Continued)
Loans to members (Continued)
repayment privileges of borrower, 14-148
security required, 14-144
Meetings of members, 14-140
Membership, qualifications and restrictions, 14-139
approval by board of directors, 14-143
expulsion of member, 14-141
withdrawal of member, 14-141
Merger of credit unions, 14-152
fees for certificate, 14-155
Name of credit union, 14-133
Officers, appointment and duties, 14-142
bond required by state supervisor, 14-152
Perpetual succession during corporate existence, 14-138
Powers of credit union, 14-138
Prior rights and duties unaffected by act, 14-158
Reports to supervisor of credit unions, 14-132
Reserves against losses, maintenance required, 14-149
Rules and regulations prescribed by supervisor, 14-152
Securities exempt from securities act, 15-2013
Separability of provisions of act, 14-153
Short title of act, 14-130
State supervisor's powers, 14-152
Supervisory committee
audit of books, 14-145
compensation of members prohibited, 14-141
composition of committee, 14-141
election and terms of members, 14-141
loans to committee members, restrictions on, 14-148
powers and duties, 14-145
suspension of members of committee, 14-145
Term not to be used by other persons or firms, 14-137
Voting by members, 14-140
Withdrawal of member, procedure, 14-151

CRIMINAL INVESTIGATION DIVISION
Abolition of investigator's position and transfer of functions, 82A-1202
Appointment and qualifications of agents, 82-414
Creation of division within office of attorney general, 82-414
Definition of "agent," 82-415
Files of division, restricted access to, 82-417
Location of office, 82-420
Powers and duties of agents, 82-416
Retirement system, agents covered, 82-418
State agencies to co-operate with division, 82-419

CRIMINAL LAW STUDY
Appointment of commission by supreme court, 94-1001-2
Composition of commission, 94-1001-3
Employment of secretary and research services by commission, 94-1001-9
Expenses of commission members, reimbursement, 94-1001-10
Officers of commission, selection, 94-1001-11
Procedural rules, adoption by commission, 94-1001-11
Proposals for changes in law
distribution to bench and bar by commission, 94-1001-4
hearings by supreme court on commission proposals, 94-1001-6
legislative approval required, 94-1001-7
submission to supreme court for approval, 94-1001-5
supreme court, suggestions by, 94-1001-8
Purpose of act, 94-1001-1
Records of commission proceedings, 94-1001-11
Removal of members from commission, 94-1001-3
Research agencies, employment by commission, 94-1001-9

CRIMINAL LAW STUDY (Continued)
Scope of study by commission, 94-1001-2
Terms of office of commission members, 94-1001-3
Vacancies on commission, filling, 94-1001-3

CRIMINAL OFFENSES

For index to Criminal Code of 1973, see special pamphlet issued separately

Abandoned vehicles
litter control law applicable to abandoned vehicles, 94-3337
removal or sale in unauthorized manner, 53-909
streams, use for flood control or re-inforcement of banks unlawful, 94-3552.1, 94-3552.2
Alcoholic beverage bottle clubs, 4-172, 4-173
Alienation of affections, bringing or threatening litigation, 17-1206
Attainder of treason or felony by legislature prohibited, 1972 Const., II, 30
Aviation gasoline, unlawful use as misdemeanor, 84-1855.1
Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104, redes. 51-401
Bigamy, venue of prosecution, 95-410
Big-game hunting violation as misdemeanor, 26-303.4
Bounty law, fraudulent claims under, 46-1915
Breach of promise, bringing or threatening litigation, 17-1206
Chain distributor schemes as felony, punishment, 94-1833, 94-1834
definitions, 94-1832
Children, offenses involving
abandonment or nonsupport, 94-304
firearms, permitting use, 94-3579
lewd and lascivious acts against children, 94-4106
violations by children, causing, permitting, or contributing to, 10-617
Coloration of wheat, oats, rye or barley
required when products treated with injurious or toxic substances, 94-35-271.1, redes. 3-236
sale or offering for sale in violation of act, 94-35-271.2, redes. 3-237
violation of act requiring coloration, misdemeanor, 94-35-271.3, redes. 3-238
Commercial tow cars improperly equipped, 32-21-161, 32-21-162
Consumer loan act, violations, 27-228
Contraceptives, illegal advertising and distribution as misdemeanor, 94-3620 to 94-3623
Corporations
annual report, failure to file, 15-22-125
signing of false documents by corporate officers or directors, 15-22-126
County zoning regulations, violation, 16-4707
Credit device violations
felony, violations deemed, 94-1829
knowledge of falsity or revocation implied from presentation or use, 94-1828
misdemeanor, violations deemed, 94-1829
notice of revocation of device, manner in which given, 94-1827
possession of false or stolen device unlawful, 94-1826
retention of device without authority unlawful, 94-1825
telephone or telegraph communications originating or terminating in state, application to, 94-1830
theft of credit device unlawful, 94-1825
unauthorized use of credit device unlawful, 94-1823
use of false, expired or revoked credit device unlawful, 94-1823
Credit union, misuse of name, 14-137
Dentistry, practice without certificate, 66-919
Discrimination because of race, creed, color or national origin, 64-303
Dog licensing act violations, misdemeanor, 16-4613
Driving while license suspended or revoked, 31-155
Electric lines, tampering with or tapping, 94-3203
Escape from custody on interstate detainer, 94-1101-4, redes. 95-3134
Firearms, permitting use by minors, 94-3579

CRIMINAL OFFENSES (Continued)
Fireworks regulatory act, penalty for violation, 69-2706
Fish illegally taken, possession or removal from state, 26-701
Fishing violations under reciprocal privileges, 26-228
Food, Drug and Cosmetic Act, violations of, 27-705
Food service establishments, offenses relating to, 27-625
obtaining food with intent to defraud, penalty, evidence of intent, 94-1831
Funeral directors and insurers, prohibited relations, 40-3521
Game animals, contests based on size, 26-811
Game illegally taken, possession or removal from state, 26-701
Game wardens' retirement system, false claims under, 68-1423
Grain warehousemen
operation without license, 3-228.7
reports, falsification or failure to file, 3-227
Homicide, state criminal jurisdiction, 95-304
death and cause of death in different counties, venue, 95-406
Horse racing violations, 62-508
Hotels, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Identification cards, false procurement, penalty, 94-2014
Inducing engagement as advertising agency for sale of real property by misrepresentation of services, penalty, 94-1822
Industrial insurance account in agency fund, conversion of profits from, 92-1123
Industrial school resident, aiding in leaving school, 80-2212
Insurance agent, misappropriation of funds by as larceny, 40-3324
Insurance code violations, 40-2617
false representation in applications and claims, 40-3522
Kidnaping, venue of prosecution, 95-411
Labeling requirements on paint and paint products, penalty for violation, 3-1511
Larceny, robbery, false pretenses or embezzlement, venue of offenses, 95-408
Litter control law, penalties for violations, 94-3339
Livestock running at large in road construction area, 32-321
Lobbyist licensing and regulatory act, violations, 43-808
Marriage, declaration of marriage without solemnization, violation of act concerning, 48-130.2
Mortician's and funeral director's act, violation, 66-2717
Motels, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Motorboat and vessel regulatory act, penalty for violations, 69-3518
Obscene conduct, harassment by telephone, penalty, 94-35-221.5, 94-35-221.6
Obtaining money for property or services by false pretenses, penalty, 94-1805
Occupational disease act, violation, penalty, 92-1340
Offensive sexual material, public display prohiibted, punishment, 94-3624 to 94-3626
Optometry, practice without license, 66-1314
Pawnbrokers, secondhand goods or junk dealers, failure to keep register as misdemeanor, 94-3702
Petroleum products, violations with respect to, 60-233
Political contributions by insurers, 40-3518
Post-attack resource management, violation of rules and regulations, 77-1508
Printing for state, obtaining from noncomplying contractor, 82-1138
Private conversation, recording without knowledge of parties as misdemeanor, 94-35-274
exemptions from general prohibition, 94-35-275
Real estate license act violations, 66-1940
Receiver of stolen property, presumption from possession, punishment, 94-2721
Recording of conversation without knowledge of parties as misdemeanor, 94-35-274
exemptions from general prohibition, 94-35-275
Refuse disposal areas, violations with respect to, 69-4009
Retail installment sales act, penalty for violation, 74-611
Roadblocks established by peace officers, failure to stop, penalty, 95-618
School law violations not otherwise covered, 75-8307
Sheep, removal from county without permit, 46-810
Subdivided lands, improper sale or leasing outside state, 67-2116
Telephone and telegraph facilities, offenses involving
abuse, harassment or extortion by telephone, 94-35-221.5, 94-35-221.6
false or unauthorized use of credit card or telephone number, 94-1823

CRIMINAL OFFENSES (Continued)
Telephone and telegraph facilities, offenses involving (Continued)
felony, credit device violations deemed, 94-1829
fraudulent device to obtain service without intention to pay, 94-1824
injury to or removal of coin box or wires, 94-3211
interstate communication, application of credit act to, 94-1830
knowledge presumed from unauthorized use of credit card or telephone number, 94-1828
misdemeanor, credit device violations deemed, 94-1829
notice of revocation of credit card, manner of giving, 94-1827
tampering with or tapping lines, 94-3203
Television, operation of VHF booster or VHF translator system, penalty for violations of act, 70-407
Trucks, failure to display owner's name on, 53-803
Unauthorized insurer, representing or aiding, 40-3401
Unclaimed property, failure to report or pay over to state treasurer, 67-2225
Uniform facsimile signatures of public officials act, violation with intent to defraud, felony, 59-1304
Union interference with operation of sole proprietor or two man partnership retail or amusement establishment, 41-1805
Vocational school for girls resident, aiding in leaving school, 80-2212
Warehouse receipts, crimes involving
delivery of goods without obtaining possession of receipt, 88-154
duplicate negotiable receipt, issuance, 88-152
Wife, abandonment or nonsupport, 94-301
Wild turkey, taking in violation of act, misdemeanor, 26-512

CRIMINAL PROCEDURE
Admission, motion to produce or suppress, 95-1804, 95-1805
Appeals
amicus curiae, brief of, 95-2417
application of chapter, 95-2401
authority of court, determination of appeal, 95-2426
briefs
amicus curiae, brief of, 95-2417
appellant's brief, contents and arrangement, 95-2416
appendix, 95-2418
filing and service of, 95-2419
form, printing and binding, 95-2420
submission of case on briefs, court may direct argument, 95-2421
calendar, placing causes upon calendar, setting for argument, 95-2424
death sentence, stay of execution, 95-2406
defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
determination on appeal, authority of reviewing court, 95-2426
dismissal for failure to cause timely transmission or to docket appeal, 95-2410
dismissal of appeal, effect of, 95-2411
district court jurisdiction, 1972 Const., VII, 4
docket
docketing appeal, 95-2410
entry and notice of orders and judgments, 95-2422
errors on appeal
jurisdictional or constitutional rights noticed, 95-2425
matters not affecting substantial rights disregarded, 95-2425
reversal for error by trial court against appellant, error must be prejudicial, 95-2412
filing of papers, 95-2413
briefs, time for filing, number of copies, consequences of failure to file, 95-2419
petitions for rehearing, 95-2423
time, computation and extension of, 95-2414
fine, stay of execution, 95-2406
form of briefs, motions, and other papers, 95-2420
habeas corpus, appeal from order discharging petitioner, 95-2714
hearings, oral arguments, requirements, 95-2421
petition for rehearing, 95-2423

CRIMINAL PROCEDURE (Continued)

Appeals (Continued)
imprisonment, defendant admitted to bail, stay of execution, 95-2406
indigent appeals, procedure, 95-2428
justices' courts, procedure for trial in district court, 95-2009
mailing of copy of judgment or order and mailing of notice of date of entry, duties of clerk, 95-2422
motions, writing required, contents, time for answer, 95-2415
filing with judge, 95-2413
form, printing and binding, 95-2420
notice of appeal
contents, service, 95-2405
exclusive method of review, 95-2401
opinion of court, issuance of mandate, return of record and termination of jurisdiction, 95-2427
oral argument, requirements, 95-2421
calendar, withdrawal of records, 95-2424
petitions for rehearing, 95-2423
orders, rulings, or proceedings of trial court against respondent, review on appeal, 95-2412
parties, appellant and respondent, 95-2405
police courts, procedure for trial in district courts, 95-2009
fines for city ordinance violations, disposition of, 95-2008.1
post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, below
appeal from order, 95-2608
probation, effect of appeal, 95-2406
procedural rules promulgated by supreme court, 1972 Const., VII, 2; 95-2801 to 95-2806, redes. 95-103 to 95-108
record on appeal
agreed statement as record, 95-2408
composition of record, 95-2408
correction or modification of record, 95-2408
filing of record, 95-2410
indigent appeals, procedure, 95-2428
permission to take from clerk's office, 95-2424
statement of evidence or proceedings, 95-2408
transcript of proceedings, duties of parties, costs, 95-2408
transmission of record, time for, duty of appellant, duty of clerk, extension of time, 95-2409
relief pending appeal, 95-2406
remand of cause to trial court, return of record and termination of jurisdiction, 95-2427
reversal of judgment, defendant discharged, 95-2430
scope of appeal
defendant, appeal from conviction and certain orders after judgment, scope of review, 95-2404
state, appeals from certain court orders or judgments, 95-2403
sentence, review of sentence, 95-2211, 95-2501 to 95-2504—See Sentence and judgment, review of sentence, below
service of papers, 95-2413
briefs, time for, number of copies, 95-2419
time, computation and extension of, 95-2414
several defendants, appeal by one authorized, 95-2429
state, appeals from certain orders or judgments authorized, 95-2403
effect of appeal by state, 95-2407
stay of execution, 95-2406
substantive rights of parties, consideration on appeal, 95-2412
supreme court jurisdiction, 1972 Const., VII, 2
suspension of statutory requirements authorized, 95-2402
time, computation and extension of, 95-2414
time for appeal, 60 days after rendition of judgment, 95-2405
title of case not changed, 95-2405

Appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902

CRIMINAL PROCEDURE (Continued)

Arraignment
- answer, time allowed, 95-1607
- definition, 95-1601
- irregularity of arraignment, effect, 95-1608
- joint defendants, 95-1605
- place of arraignment, 95-1602
- presence of defendant, 95-1603, 95-1604
- procedure on arraignment, 95-1606

Arrest, 95-601 to 95-619—See ARRESTS

Bail, 1972 Const., II, 21; 95-1101 to 95-1123—See BAIL

Change of judge, 95-1709

Change of venue, 95-401, 95-1710
- justices' and police courts, 95-2003

Charging offense, methods of prosecution, 95-1501, 95-1502
- "charge" defined, 95-203
- justice and police courts, 95-2001

Close Pursuit Act, 95-619

Competency of accused
- death sentence, determination of mental fitness, 95-2304, 95-2305
- defense of mental disease or defect excluding responsibility
  - affirmative defense, notice, form of verdict and judgment on finding of irresponsibility, 95-503
  - determination of irresponsibility on basis of psychiatrist's report, judgment, 95-507
  - legal effect of acquittal, commitment of defendant, release or discharge, 95-508
  - requirements, 95-501
- definition of "mental disease or defect," 95-501
- evidence of mental disease or defect, when admissible, 95-502
- evidence, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
- examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
- expense of determination and confinement, county responsible, recovery from other political subdivisions, 95-506
- fitness to proceed, mental disease or defect excluding
  - effect of finding of unfitness, proceedings if fitness regained, 95-506
  - requirements, 95-504
- privilege, statements for purposes of examination or treatment inadmissible except on issue of mental condition, 95-509
- psychiatric examination of defendant, rights of defendant or state, form of expert testimony, 95-505, 95-507
- recommitment after conditional release, 95-508
- release of defendant acquitted on ground of mental disease or defect, hearing, burden of proof, 95-508
- test for mental disease or defect excluding responsibility, 95-501

Complaint
- amending charge, 95-1505
- appearance of person arrested without warrant, filing complaint, 95-901
- form of charge, 95-1503
- joinder of offenses and of defendants, 95-1504
- prior conviction, charge of, notice and procedure, 95-1506
- prosecution of offense by complaint, 1972 Const., II, 20; 95-1501, 95-1502
  - justice and police courts, 95-2001

Confession, motion to produce or suppress, 95-1804, 95-1805

Construction of Code of Criminal Procedure, 95-102

Continuance, pretrial motion, requirements, 95-1708

Conviction—See Sentence and judgment, below
- definition, 95-204

Coroner's office, 95-801 to 95-814—See COUNTY CORONER

Counsel, right to, 1972 Const., II, 24
- appearance of arrested person, duty of court to inform defendant of rights, 95-902
- duration of appointment of counsel, 95-1003
- duty of court to inform defendant, 95-902, 95-1001

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Counsel, right to (Continued)
felony charge, furnishing counsel required, when, 95-1001
misdemeanor charge, furnishing counsel, when, 95-1001
payment of appointed counsel, 95-1005
post-conviction criminal action or proceeding, appointment of counsel authorized, 95-1004
public defender's office, authority of counties to establish, 95-1006
waiver of counsel, 95-1002
Courts, definition, 95-205
Death sentence
appeals, stay of execution, 95-2406
execution of sentence, procedure, 95-2303
mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
offense punishable by death or imprisonment, right of court to pronounce sentence of either, 95-2206.1
pregnant female, proceedings, 95-2306, 95-2307
Defenses and objections raised before trial, 95-1701, 95-1702
Definitions
arraignment, 95-1601
arrest, 95-601
charge, 95-203
conviction, 95-204
coroner's inquest, 95-803
court, 95-205
gender, masculine gender includes feminine, 95-202
guaranteed arrest bond certificate, 95-1121
judge, 95-206
judgment, 95-207
magistrate, 95-208
meanings of words and phrases, 95-201
mental disease or defect, 95-501
new trial, 95-2101
notice to appear, 95-601
offense, 95-209
peace officer, 95-210
search warrant, 95-703
sentence, 95-211
singular term includes plural, 95-202
summons, 95-601
warrant of arrest, 95-601
Depositions, 95-1802
Discharge of defendant
granting of motion to dismiss, 95-1706
not guilty judgment, 95-2202
reversal of judgment on appeal, 95-2430
Discovery, applicable rules, 95-1803
Dismissal of action, complaint, information, or indictment
misdemeanor charge not brought to trial within six months, 95-1703
motion of court or application of attorney prosecuting, 95-1703
pretrial motion, effect of determination, 95-1706
Disqualification of judge, requirements and procedure, 95-1709
Double jeopardy prohibited, 1972 Const., II, 25; 95-1711
Due process of law, 1972 Const., II, 17
Evidence
books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
confession or admission, motion to produce or suppress, 95-1804, 95-1805
depositions, 95-1802
illegally seized evidence, motion to suppress, 95-1806
Examination of defendant, preliminary examination, 95-1201 to 95-1204—See Preliminary examination, below
Examination to determine competency of accused, 95-505, 95-507
Execution of sentence, 95-2301 to 95-2312—See Sentence and judgment, execution of sentence, below

CRIMINAL PROCEDURE (Continued)
Former prosecution, when bar to subsequent prosecution, 1972 Const., II, 25; 95-1711
Grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
Guilty plea, conditions for acceptance, withdrawal
district court, 95-1902
justices' and police courts, 95-2004
Habeas corpus, 1972 Const., II, 19; 95-2701 to 95-2716—See HABEAS CORPUS
Indictment, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
Information
amending charge, 95-1505
application for leave to file information, requirements, 95-1301
commencement of prosecutoin by information, 1972 Const., II, 20; 95-1501, 95-1502
district court judge, information against, procedure, 95-1301
failure of county attorney to file, duty of court, 95-1303
form of charge, 95-1503
joinder of offenses and of defendants, 95-1504
prior conviction, charge of, notice and procedure, 95-1506
time for filing by county attorney, effect of failure, 95-1302
Initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
Insanity, 95-501 to 95-509—See Competency of accused, above
Interstate agreement on detainers, text and enactment, 94-1101-1, redes. 95-3131
co-operation of public agencies in enforcement, 94-1101-3, redes. 95-3133
co-ordinator of agreement, appointment and duties, 94-1101-6, redes. 95-3136
delivery of prisoner by institution on detainer, 94-1101-5, redes. 95-3135
district courts to function under agreement, 94-1101-2, redes. 95-3132
escape from custody on detainer, penalty, 94-1101-4, redes. 95-3134
Joinder of offenses and of defendants in making charge, 95-1504
appeal by one defendant authorized, 95-2429
Judges
definition, 95-206
disqualification, substitution of judge, requirements and procedure, 95-1709
Judgments, 95-2201 to 95-2216—See Sentence and judgment, below
definitions, 95-207, 95-211
Juries and jurors
coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
district court
admonition upon adjournment of court, 95-1913
alternate jurors, 95-1909
challenges, 95-1909
examination of jurors, 95-1909
formation of trial jury, number of drawn, 95-1905
instructions to jury, 95-1910
list of prospective jurors furnished, 95-1909
number of jurors, 95-1901
objection to jury panel, motion to discharge, 95-1908
qualifications and exemptions, 95-1909
reduction in number of jurors upon agreement of parties, 95-1901
retirement of jury, 95-1913
right to jury trial, 95-1901
separation during trial, 95-1913
verdicts—See Verdicts, below
view of place of offense or property, 95-1912
waiver of jury trial upon written consent of parties, 95-1901
grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
justices' courts, 95-2004 to 95-2006—See Justices' courts, below
police courts, 95-2004 to 95-2006—See Police courts, below
right to jury trial, 1972 Const., II, 26; 95-1901, 95-2004
speedy public trial by impartial jury, 1972 Const., II, 24
unanimous verdict required, 1972 Const., II, 26
Jurisdiction
appeals, remand of cause and termination of jurisdiction, 95-2427
coroner, jurisdiction of, 95-812
district courts, 1972 Const., VII, 4; 95-301
justices' courts, 1972 Const., VII, 5; 95-302

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Jurisdiction (Continued)
municipal courts, 95-303
police courts, 95-303
state criminal jurisdiction, 95-304
supreme court, 1972 Const., VII, 2
Justices' courts
change of place of trial, 95-2003
disqualification of judge, 95-1709
docket required, contents, 95-2002
guilty plea, conditions for acceptance, 95-2004
juries and jurors
discharge of jury, 95-2006
examination of jurors, challenges, 95-2005
formation of trial jury, 95-2005
number of jurors, 95-2005
right to trial by jury, waiver, 95-2004
verdict, 95-2006
jurisdiction of criminal cases, 1972 Const., VII, 5; 95-302
dangerous drug act cases, no jurisdiction in, 95-302
preliminary examination, 95-1201 to 95-1204
prosecutions commenced by complaint, 95-2001
sentence and judgment, execution of judgment, 95-2007, 95-2008
trials
guilty plea, conditions for acceptance, 95-2004
issue, designation for trial, 95-2004
preparation for trial, time for, 95-2004
presence of defendant, requirements, 95-2004
right to jury trial, waiver, 95-2004
verdicts
number of jurors required to concur, 95-2006
poll of jury, 95-2006
return, requirements, 95-2006
several defendants, requirements, 95-2006
Magistrate, definition of, 95-208
Mental disease or defect of accused, 95-501 to 95-509—See Competency of accused, above
Motions
appeals, requirements, 95-2415
filing with judge, 95-2413
new trial, 95-2101
post-conviction hearing, time for motion, 95-2604
pretrial motions, 95-1701 to 95-1710—See Pretrial motions, below
Multiple offenses committed in same transaction or conduct, when conviction limited to one offense, 95-1711
New trial, definition and effect, motion for, 95-2101
appeal, authority to order new trial, 95-2426
bail, provisions for, 95-1119
Notice to appear, issuance, form, failure to appear, 95-614
Peace officers
arrests, 95-608—See ARRESTS, Peace officer
bail, acceptance, procedure, 95-1103, 95-1104
definition, 95-2010
Police courts
appeals, procedure for trial in district court, 95-2009
fines for city ordinance violations, disposition of, 95-2008.1
change of place of trial, 95-2003
docket required, contents, 95-2002
juries and jurors
discharge of jury, 95-2006
examination of jurors, challenges, 95-2005
formation of trial jury, 95-2005
number of jurors, 95-2005
right to trial by jury, waiver, 95-2004
verdict, 95-2006
jurisdiction of criminal cases, 95-303

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Police courts (Continued)
prosecutions commenced by complaint, 95-2001
sentence and judgment, execution of judgment, 95-2007, 95-2008
fines for city ordinance violations tried on appeal, disposition of, 95-2008.1
trials
guilty plea, conditions for acceptance, 95-2004
issue, designation for trial, 95-2004
preparation for trial, time for, 95-2004
presence of defendant, requirements, 95-2004
right to jury trial, waiver, 95-2004
verdicts
number of jurors required to concur, 95-2006
poll of jury, 95-2006
return, requirements, 95-2006
several defendants, requirements, 95-2006
Post-conviction hearing
appeal from order entered on motion, 95-2608
commencement of proceedings by petition, 95-2602
contents of petition, 95-2603
grounds for petition, 95-2601
proceedings on petition, notice, proof, order, 95-2605
record required, 95-2606
successive petitions prohibited, 95-2607
time for motion, any time after conviction, 95-2604
Prejudice
change of place of trial, requirements and procedure, 95-1710
justice and police courts, 95-2003
substitution of judge, requirements and procedure, 95-1709
Preliminary examination
definition, 95-1201
deposition of witness after examination, requirements, 95-1204
exclusion and separation of witnesses, 95-1203
proceedings at examination, 95-1202
recognizance by witness after examination, requirements, 95-1204
waiver of preliminary examination, defendant held to answer, 95-1202
Presentence investigations, contents, availability of report, 95-2203 to 95-2205
Pretrial motions
arraignment, motions allowed in answer, 95-1607
books, documents and objects, subpoena authorized, inspection or copying by defendant, 95-1801, 95-1803
confession or admission, motions to produce or suppress, 95-1804, 95-1805
continuance, requirements for motion, 95-1708
defenses and objections raised before trial, 95-1701, 95-1702
denial of motion, procedure, 95-1706
depositions, 95-1802
discovery, applicable rules, 95-1803
dismissal of action on motion of court or application of attorney prosecuting, 95-1703
disqualification of judge, requirements and procedure, 95-1709
evidence illegally seized, motion to suppress, 95-1806
granting of motion to dismiss, procedure, 95-1706
hearing on motion, 95-1705
jury panel, objection to, motion to discharge, 95-1908
substitution of judge, requirements and procedure, 95-1709
time of making motion, 95-1704
transfer of trial, motion based on lack of jurisdiction or improper place, 95-1707
Prior conviction, charge of, notice and procedure, 95-1506
Prisoner furlough program—See PRISONS AND PRISONERS, Prisoner furlough program
Prosecution, methods of charging offense, 95-1501, 95-1502
justice and police courts, 95-2001
Public defender's office, 95-1006
Purpose of Code of Criminal Procedure, 95-102

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Recognizance
preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204
release authorized, duties of court, 95-1106
Review division of supreme court
appointment of district court judges, 95-2501
decisions, procedure and disposition of, 95-2503
meetings, where held, 95-2501
number of judges, number required for decision, 95-2501
procedure for review, 95-2502
scope of act, 95-2504
Rights of defendant
appear and defend in person, 1972 Const., II, 24
change of place of trial, 95-1710, 95-2003
compelling incriminating testimony, immunity from prosecution, 95-1807
counsel, right to, 1972 Const., II, 24; 95-1001 to 95-1006
initial appearance of arrested person, duties of person who made arrest and of court, 95-901, 95-902
jury trial, 1972 Const., II, 26; 95-1901, 95-2004
unanimous verdict required, 1972 Const., II, 26
restoration of rights on termination of state supervision, 1972 Const., II, 28
self-incrimination, compulsion prohibited, 1972 Const., II, 25
speedy public trial, 1972 Const., II, 24
misdemeanor charge, 95-1703
substitution of judge, 95-1709
venue of prosecution, right to change, 1972 Const., II, 24
witnesses, right to meet face to face and have process to compel attendance, 1972 Const., II, 24
Roadblocks, arrests at, 95-618
Rules of supreme court, 1972 Const., VII, 2; 95-2801 to 95-2806, redes. 95-103 to 95-108—See Supreme court rules, below
Scope of Code of Criminal Procedure, 95-101
Search and seizure, 1972 Const., II, 11; 95-701 to 95-708—See SEARCH AND SEIZURE
Second offense, charge of prior conviction, notice and procedure, 95-1506
Self-incrimination, compulsion prohibited, 1972 Const., II, 25
Sentence and judgment
board of pardons, statistical data transmitted to, 95-2210
civil and constitutional rights of offender unaffected, exception, 95-2227
combination of sentences authorized, 95-2206
commutation of prison sentence to commitment to juvenile facilities, 80-2210
commutations, governor's power to grant, 1972 Const., VI, 12
construction of chapter, liberal construction, 95-2201
county jail as place of imprisonment in absence of statutory designation, 95-2206.2
credit for incarceration prior to conviction, 95-2215
credit for time served, 95-2214
cruel and unusual punishments prohibited, 1972 Const., II, 22
death sentence, execution of, 95-2303—See Death sentence, above
deferment of imposition of sentence, 95-2206
withdrawal of plea allowed, effect, 95-2207
definitions, 95-207, 95-211
entry of judgment and judgment roll, 95-2209
execution of sentence
commitment of defendant, 95-2206, 95-2301
death sentence, 95-2303—See Death sentence, above
fine, execution of, 95-2302
justices' courts, 95-2008
police courts, 95-2008
sheriff, commitment of defendant to custody of, 95-2301
executive clemency, 1972 Const., VI, 12
felony penalty not specified, maximum sentence, 95-2206.4
fines for offense, imposition of, 95-2206
appeal, stay of execution, 95-2406
disposition of fines, 95-2228

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Sentence and judgment (Continued)
fines for offense (Continued)
excessive fines prohibited, 1972 Const., II, 22
execution of, 95-2302
lien of judgment to pay fine, 95-2208
remission by governor, 1972 Const., VI, 12
guilty verdict, sentence and judgment within reasonable time, 95-2202
imposition of sentence, exclusive duty of judge, 95-2212
investigations, contents of presentence investigation, availability of report, 95-2203 to 95-2205
justices' courts, 95-2007, 95-2008
mental disease or defect excluding responsibility, form of verdict and judgment on finding of irresponsibility, 95-503
merger of sentences, 95-2213
misdemeanor penalty not specified, maximum sentence, 95-2206.3
not guilty judgment, discharge of defendant, 95-2202
open court, judgment rendered in, 95-2202
persistent felony offender, definition, sentencing, 95-1507
police courts, 95-2007, 95-2008
post-conviction hearing, 95-2601 to 95-2608—See Post-conviction hearing, above
presentence investigations, contents, availability of report, 95-2203 to 95-2205
probation authorized, 95-2206
punishment founded on principles of prevention and reformation, 1972 Const., II, 28
repealed statute specifying misdemeanor penalty, maximum penalty, 95-2206.3
restoration of rights on termination of state supervision, 1972 Const., II, 28
review division of supreme court, 95-2501 to 95-2504—See Review division of supreme court, above
review of sentence, 95-2211
sentences enumerated, 95-2206
separate sentences, merger of sentences, 95-2213
stay of execution of sentence authorized, 95-2206
suspending or deferring sentence subject to restrictions or conditions authorized, 95-2206
Western Interstate Corrections Compact, 95-2308 to 95-2312
work release program for prisoners, 95-2216
Stop and frisk law, 95-719
Subpoenas
accused's right to have process to compel attendance of witnesses, 1972 Const., II, 24
coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
discovery, subpoena as discovery device, 95-1803
issuance, requirements and form, 95-1801
Substitution of judge, requirements and procedure, 95-1709
Summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Supreme court rules
adoption of rules of pleading, practice and procedure, authority of court, 1972 Const., VII, 2; 95-2801, redes. 95-103
advisory committee, appointment, members, duties, 95-2801, redes. 95-103
effective date of rules, 95-2805, redes. 95-107
expiration date of rule-making power, 95-2805, redes. 95-107
legislature's right to adopt rules not abridged, 95-2806, redes. 95-108
present laws and rules in force until modified or superseded, 95-2804, redes. 95-106
promulgation of rules of pleading, practice and procedure, authority of court, 95-2801, redes. 95-103
proposed rules, distribution of and hearings before adoption, 95-2803, redes. 95-105
rights of state or a defendant, not abridged, enlarged or modified, 95-2801, redes. 95-103
Transfer of trial
justice and police courts, 95-2003
lack of jurisdiction or proper venue, 95-1707
prejudice existing in county, 95-1710

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)

Trials
- discharge of co-defendant to become witness, 95-1504
- district court
  - adjournment of court, 95-1914
    - admonition to jury, 95-1913
  - county attorney, failure to attend, appointment of substitute, 95-1903
  - degree of offense, jury to find, 95-1915
  - discharge of defendant, when, 95-1916
  - guilty plea, conditions for acceptance, withdrawal, 95-1902
  - instructions to jury, 95-1910
  - issues, designation for jury trial, 95-1901
  - jury panel, objection, motion to discharge, 95-1908
  - jury trial, 95-1901—See Juries and jurors, district court, above
  - lesser offense, conviction of authorized, 95-1915
  - not guilty plea, issues, 95-1901
  - order of prosecutions, 95-1906
  - order of trial, 95-1910
    - departure from, authority for, 95-1911
  - preparation for trial, reasonable time allowed, 95-1907
  - presence of defendant, mistrial for absence, 95-1904
  - retirement of jury, 95-1913
  - right to jury trial, number of jurors, 95-1901
  - separation of jurors during trial, 95-1913
  - several defendants, verdicts, 95-1915
  - view of place of offense or property, 95-1912
  - waiver of jury, law and fact determined by court, 95-1901
- justices' courts, method of trial, 95-2004—See Justices' courts, above
- mental disease or defect excluding fitness to proceed
  - requirements, procedure, 95-504 to 95-506
- new trial, definition and effect, motion for, 95-2101
  - appeal, authority to order new trial, 95-2426
  - bail, provisions for, 95-1119
- police courts, method of trial, 95-2004—See Police courts, above
- right to jury trial, 1972 Const., II, 26; 95-1901, 95-2004
  - speedy public trial by impartial jury, 1972 Const., II, 24
  - unanimous verdict required, 1972 Const., II, 26
- several defendants, verdicts, 95-1915
  - appeal by one defendant authorized, 95-2429
- verdicts—See Verdicts, below

Venue
- aiding, abetting, or procuring commission of offense in another county, 95-404
- bigamy, trial where marriage or cohabitation occurred, 95-410
- boundary, offense committed on or near, 95-403
- change of venue, 95-401, 95-1710
  - accused's right to change, 1972 Const., II, 24
  - justice and police courts, 95-2003
- commencement of offense outside state, trial where offense consummated, 95-407
- death and cause of death in different counties, 95-406
- escape from prison, trial in any county, 95-409
- kidnaping, trial where victim has traveled or been confined, 95-411
- objections to place of trial, waiver, hearing, 95-401, 95-1710
  - justice and police courts, 95-2003
- stolen property, trial in county where control exerted, 95-408
- telephone misuse, venue of offenses, 94-35-221.5
- transit, offenses committed while in, 95-405
- treason, trial in any county, 95-412
- trial in county where offense committed, 95-401
- two or more acts occurring in different counties, 95-402

Verdicts
- coroner's inquest, writing required, contents, 95-807
- district court
  - degree of offense, jury to find, 95-1915
  - directed verdict, 95-1909
  - general verdict to each offense, 95-1909
  - lesser offense, conviction of authorized, 95-1915

References are to Title and Section numbers

CRIMINAL PROCEDURE (Continued)
Verdicts (Continued)
district court (Continued)
number required to concur, 95-1915
poll of jury, 95-1915
return of verdict, form, 95-1915
several defendants, 95-1915
unanimous verdict required, 95-1915
justices' courts, 95-2006
police courts, 95-2006
unanimous verdict required, 1972 Const., II, 26
Warrant for arrest, constitutional requirements, definition, issuance, procedure, 1972 Const., II, 11; 95-601, 95-603 to 95-605
Warrant for search and seizure, constitutional requirements, definition, issuance, procedure, 1972 Const., II, 11; 95-703 to 95-711
Western Interstate Corrections Compact, 95-2308 to 95-2312
Witnesses
accused's right to meet face to face and have process to compel attendance, 1972 Const., II, 24
compelling incriminating testimony, immunity from prosecution, 95-1807
coroner's inquest, subpoena of witness, compelling attendance, writing and filing of testimony, 95-805, 95-806, 95-808
detention of person as material witness, limitations on, 1972 Const., II, 23
discharge of co-defendant to become witness, 95-1504
expenses of witnesses, 95-1801
indigent defendants, procedure for obtaining subpoenas, 95-1801
nonresidents, "witness" and "state" defined, 95-1808
preliminary examination, exclusion and separation, recognizance by or deposition after examination, 95-1203, 95-1204
subpoena, requirements and form, 95-1801

CULTURAL RESOURCES
Preservation and administration, 1972 Const., IX, 4

D

DAIRIES AND DAIRY PRODUCTS
Manufactured dairy products
access of commissioner to premises of dairy or plant, 3-24-114
adulterated products, sale and use prohibited, 3-24-120
adulteration of milk or cream unlawful, 3-24-124
advisory committee on first rules and regulations, 3-2488
cheese products, labeling and refrigeration, 3-24-117
unpasteurized milk or cream, cheese made from, 3-24-126
commissioner of agriculture, regulation by, 3-2488
condemnation of unsafe milk, 3-24-104
removal from market of product constituting health hazard, 3-24-113
construction of plants, plans to be approved, 3-24-110
containers and equipment, standards for cleanliness and condition, 3-24-134
co-operative agreements with other agencies, 3-24-115
definition of terms, 3-2497
enforcement of laws and regulations, 3-2493
evidence used in court or at hearings, 3-24-109
fats added, sale or importation of products prohibited, 3-24-121
fees for licenses, 3-24-112.1
filled dairy products unlawful, 3-24-122
food service establishment, plant license not required for manufacture of nondairy products, 3-24-112.1
grading of milk required, 3-24-104
license required for grader, weigher and sampler, 3-24-105
hearings on suspension, revocation or denial of license, 3-2491, 3-24-106
identity standards, conformity required, 3-24-123
imported products, sanitary standards for, 3-24-118
impure products, sale or use prohibited, 3-24-120

DAIRIES AND DAIRY PRODUCTS (Continued)
Manufactured dairy products (Continued)
injunction to prevent violations, 3-2496
investigation of complaints and violations, 3-2496
access of commissioner to premises of dairy or plant, 3-24-114
labeling of products
cheese containers, 3-24-117
cheese made from unpasteurized milk or cream, 3-24-126
Food, Drug and Cosmetic Act requirements, conformity to, 3-24-136
frozen desserts containing animal or vegetable fat, 3-24-135
name of manufacturer and wholesaler or retailer to be shown, 3-24-119
pasteurized products, 3-24-128
licenses required
appeal to district court from suspension, denial or revocation of license, 3-24-106
butter or cheese wholesaler, 3-24-133
commissioner's authority to issue licenses, 3-2490
cream station, fee, 3-24-112.1
cream station owned by licensed plant, separate license not required, 3-24-112.1
dairy produced milk for manufacturing purposes, fee, 3-24-112.1
delinquency in renewal of license, penalty, 3-24-101, 3-24-112.1
expiration and renewal of licenses, 3-24-101, 3-24-112.1
fees for licenses, 3-24-112.1
food service establishment, plant license not required for manufacture of non-dairy products, 3-24-112.1
grader, weigher and sampler to be licensed, fee, 3-24-105, 3-24-112.1
hauler, license required, fee, 3-24-100, 3-24-112.1
health department license requirements unaffected, 3-24-129
livestock sanitary board license requirements unaffected, 3-24-129
milk or cream route, license required for, 3-24-100
notice of intention to revoke, deny or suspend license, 3-24-106
plant operator's license required, fee, 3-24-107, 3-24-112.1
posting of licenses required, 3-24-101, 3-24-112.1
privilege not a right, 3-24-101
reinstatement after revocation of license, 3-24-106
revocation, suspension or denial of license, hearings on, 3-2491, 3-24-106
tester license required, fee, 3-24-102, 3-24-112.1
transfer of licenses prohibited, 3-24-101, 3-24-112.1
monopoly statutes applicable, 3-24-130
pasteurization required, 3-24-126
equipment used for pasteurization, 3-24-127
labeling of pasteurized products, 3-24-128
records required, 3-24-127
penalties for violation of act or regulations, 3-24-137
plants for manufacture of dairy products
construction, remodeling or relocation of plant, plans to be approved, 3-24-110
license required, 3-24-107
monthly report of plant operator, 3-24-111
producers' names furnished to department, 3-24-108
political subdivision, co-operative agreements with, 3-24-115
producers of milk and cream, plant operator to furnish names and addresses on request, 3-24-108
purchase prices for milk and cream to be posted, 3-24-132
records and reports required of dairies and manufacturers, 3-2492
availability of records to commissioner, 3-24-116
monthly report of plant operator, 3-24-111
pasteurizing records, 3-24-127
refrigeration required for products, 3-24-117
removal from market of product constituting health hazard, 3-24-113
rules and regulations
advisory committee on first regulations, 3-2488
force and effect of law, 3-2493

DAIRIES AND DAIRY PRODUCTS (Continued)
Manufactured dairy products (Continued)
rules and regulations (Continued)
hearings on proposed changes to rules and regulations, 3-2495
judicial review of proposed changes, 3-2495
notice of proposed new or amended regulations, 3-2495
violation of rules and regulations as misdemeanor, 3-2493
samples of products
departmental authority to sample and test, 3-24-103
evidentiary use of samples, 3-24-109
purchasers to take and preserve samples of milk and cream, 3-2499
severability of provisions, 3-2494
standards for manufactured products, conformity required, 3-24-131
standards for milk and cream promulgated by commissioner, 3-2489
conformity to standards required, 3-24-131
testing of products
departmental authority to test and retest samples, 3-24-103
evidentiary use of test results, 3-2498, 3-24-109
license required for milk and cream tester, 3-24-102
methods used in testing, 3-2498
state department or approved laboratory, tests by, 3-2498
violations of act or regulation, penalties for, 3-24-137
Milk control board
assessment upon producer-distributors and distributors, 27-409
bonds required of distributors, 27-426
continuation of board with quasi-judicial functions, 82A-406
transfer of other functions, 82A-403
credit extension to retailers, restrictions on, 27-414.1
declaration of policy regulating milk, 27-401
definitions, 27-403
distributors and producer-distributors, records required to be kept by, 27-416
entry and inspection, powers of, 27-415
fair trade practices, rules and regulations governing, 27-414
financing of retailer, restrictions on, 27-414.2
fines assessed for violations, deposit and use, 27-417
general powers, 27-405
judicial review of orders, 27-428
licenses required of producers, distributors and jobbers, 27-408
application for license, contents, 27-410
assessments against licensees, 27-409
fees for licenses, 27-409
suspension, revocation or refusal of license, 27-411
meetings, 27-404
members, 27-404
minimum prices, hearing and procedure for establishment, 27-407
natural marketing areas, designation, 27-406
organization, 27-404
per diem expenses, 27-404
police powers of state invoked, 27-402
protection and promotion of public welfare, 27-402
service of process upon, 27-429
term of members, 27-404

DAMAGES AND RELIEF
Measurement of damages, principles applicable under Uniform Commercial Code, 87A-1-106
Sovereign immunity abolished, 1972 Const., II, 18
Speedy remedy for every injury of person, property or character, 1972 Const., II, 16
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against
Voluntary partial payment of damage claim, effect, 93-2201-7 to 93-2201-10

References are to Title and Section numbers

DAMS AND RESERVOIRS

Fish and game affected, clearance required, 26-1501 to 26-1507—See FISH AND GAME, Construction projects affecting fish and game
Floodway management and regulation, 89-3501 to 89-3515—See FLOOD CONTROL AND WATER CONSERVATION
Inspection and determination of safety of dams or dikes, procedure, jurisdiction of department of natural resources and conservation, 89-702, 89-702.1
Junked motor vehicles, use in streams unlawful, 94-3552.1, 94-3552.2
Pollution control law, existing dams considered natural condition, 69-4801
Taxability of facilities, 84-206

DANGEROUS DRUG ACT

See NARCOTIC DRUGS

DAY CARE FACILITIES

Advisory council abolished, 82A-1908
Assistance by board in meeting standards, 10-809
Definition of terms, 10-801
Enforcement powers of board of public welfare, 10-811
Exemption of facilities from regulatory act, 10-801
Fire safety standards prescribed by fire marshal, 10-804
  waiver of fire marshal approval prohibited, 10-807
Health protection standards prescribed by board of health, 10-805
  waiver of board of health approval prohibited, 10-807
Inspection of facilities by board of public welfare, 10-809
License required for operation, 10-802
  denial, suspension or revocation of license, grounds, procedure and appeal, 10-810
  fire safety compliance required for license, 10-804
  health standards compliance required for license, 10-805
  investigation of applications for license, 10-806
  issuance of licenses, 10-806
  provisional license, issuance, 10-807
  renewal of license, 10-808
  standards for license, 10-806
Municipal day care facilities, tax levy authorized, 10-802.1
Records and reports required of facilities, 10-809
Rules and regulations for conduct of facilities, 10-806
Standards prescribed by board of public welfare, 10-803
Violations of act, investigation and prosecution, 10-811

DEAD ANIMALS

Unlawful disposition, penalty, 69-4518, 69-4519

DEAD BODIES

Anatomical gifts, 69-2315 to 69-2323
Autopsy or dissection, cases in which authorized, 69-5103
  mortician authorized to perform acts necessary for burial, 69-5105
  penalty for unauthorized autopsy or examination, 69-5106
  physician to perform autopsy, 69-5104
  report of findings by physician, 69-5104
Burial permit required for disposition or removal, 69-4428
  delay in determination of death, issuance of permit pending, 69-4427
  importation of body into state, endorsement of permit, 69-4429
Certificate of death, 69-4424 to 69-4428—See VITAL STATISTICS, Death certificate
Coroner, powers and duties, 95-801 to 95-814—See COUNTY CORONER
Disinterment, permit required, procedure, 69-4428.1
Medical use of cadavers authorized, 69-5101
  procedure for obtaining cadavers, 69-5102
Occupational Disease Act, autopsies under, 92-1318

DEAF

Occupational deafness, workmen's compensation for, 92-710

DEATH SENTENCE

Appeal, stay of execution, 95-2406

References are to Title and Section numbers

DEATH SENTENCE (Continued)
Execution of sentence, procedure, 95-2303
Mental fitness of defendant, determination of, proceedings, 95-2304, 95-2305
Pregnant female, proceedings, 95-2306, 95-2307

DEBTOR AND CREDITOR
Debt adjusters
definitions, 18-401
exemptions, 18-403
prohibition and penalty, 18-402
Imprisonment for debt, 1972 Const., II, 27

DECLARATORY JUDGMENT
Action for declaratory judgment, M. R. Civ. P., Rule 57
Rule of administrative agency, action for judgment on validity of, 82-4219

DEEDS AND CONVEYANCES
Abstracts recordable, 73-101.1
effect of recording, 73-201.1
Joint tenancy in real property created by direct conveyance, 67-1602.1
Recording as notice as to property acquired after conveyance, 73-201
Unit ownership property, contents of deed, 67-2322
Validation of county dispositions of property, 16-1510 to 16-1514
Validation of defectively executed instruments, 73-207 to 73-212
Validation of fiduciary sales, 91-4324 et seq.
Validation of recorded judgment or decree affecting realty, 93-5710.1 et seq.
Validation of unacknowledged instruments, 39-135 to 39-139

DEFAULT JUDGMENT
See JUDGMENTS, Default judgment, M. R. Civ. P., Rule 55

DEMURRER
Abolition in civil cases, M. R. Civ. P., Rule 7(c)
Abolition in justices' courts, 93-6802.2

DENTISTRY
Alcoholic beverage, administration by dentist, 4-137
Annual renewal of license, fee, 66-906
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
compensation of members, 66-909
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
meetings of board, 66-904
moneys received by board, deposit and use, 66-904
report to governor, 66-904
retention of functions by board, 82A-1605
rules as to auxiliary personnel, 66-923.1
secretary-treasurer of board, duties and accounts, 66-904
Certificate to practice, filing with county recorder, 66-906
Citation of regulatory act, 66-925
Corporations for practice of dentistry, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
Injunction to prevent unauthorized practice, 66-911
Laboratories and technicians
advertising to general public prohibited, 66-910
work authorization to be given by dentist, 66-910
Malpractice, statute of limitations, 93-2624
National board of examiners certificate, recognition, 66-905
Penalties for practice without certificate, 66-919
Prosecution of violations, employment of special counsel for, 66-909

References are to Title and Section numbers

DEPARTMENT OF ADMINISTRATION

Abolition of previous agencies, 82-3322
Allocation of controller's duties among divisions, 82-3304
Building code council, functions transferred to department, 82A-202
Building programs
  advisory council abolished, 82A-213
  architects and consulting engineers, appointment, 82-3319
    restrictions on architectural work by state, 82-3320
  buildings subject to control, 82-3314
  definition of terms, 82-3314
  emergency repairs and operations authorized by governor, 82-3316
  legislative consent, when required for construction, 82-3316
  pecuniary interest prohibited to public officers and employees, 82-3321
  powers of controller in supervision of construction, 82-3318
  submission of programs to controller, governor and legislative assembly, 82-3315
  supervision of construction by department, 82-3317
  university buildings, authority of regents and governor, 82-3316
Capitol buildings and grounds, oversight and supervision by controller, 82-3309, 82-3310
Citation of act, 82-3301
Communications division created, 82-3323
  advisory council on communications, 82-3326
  appointment of administrator, 82-3323
  co-operation with other government agencies, 82-3330
  cost and other factors considered in decisions, 82-3329
  law enforcement communication system exempt, 82-3331
  powers and duties of division, 82-3325
  qualifications of administrator, 82-3324
  transfer of funds, equipment, facilities and employees, 82-3327
    rights and privileges of employees unaffected, 82-3328
Controller as chief executive officer, 82-3302
Creation of department, 82-3302
Data processing, computer, duplicating, copying, and automatic typing facilities, maintenance for state agencies, 82-3306
  advisory committee abolished, 82A-213
Divisions within department, enumeration and appointment of division heads, 82-3303
  allocation of duties among division, 82-3304
  communications division, 82-3323
Mailing facilities, maintenance for state agencies, 82-3306
Office space, assignment to state agencies, 82-3308
Purpose of act, 82-3301
Records management program, 82-3311
  definition of "records," 82-3312
  destruction of records, procedure for authorization, 82-3313
  library and museum material excluded from program, 82-3312
Regulations for administration of department, 82-3305
Reorganized department, 82A-201 to 82A-213 — See REORGANIZATION OF STATE GOVERNMENT, Department of administration
  building code functions transferred, 82A-1203
Reports of controller, 82-3305
Short title of act, 82-3301
Telephone switchboard, maintenance for state agencies, 82-3307

DEPARTMENT OF BUSINESS REGULATION

Board of milk control functions, 82A-406
Board of trade functions, 82A-404
Creation of department, 82A-401
Functions of department, 82A-402, 82A-403
State examiner as head of department, 82A-401

DEPARTMENT OF EDUCATION

Advisory councils abolished, 82A-510
Arts council continued and transferred to department, 82A-508
Board of education as head of department, 82A-501
  functions of board, 82A-506

References are to Title and Section numbers

DEPARTMENT OF EDUCATION (Continued)
Co-operative extension service, functions transferred to, 82A-502
Creation of department, 82A-501
Historical society transferred to department, 82A-503
board of trustees continued in advisory capacity, 82A-507
functions transferred to director, 82A-505
director's position continued, 82A-504
functions transferred to director, 82A-505
Library commission continued and transferred to department, 82A-509

DEPARTMENT OF HEALTH
Abolition of department and transfer of functions, 82A-602
industrial hygiene functions transferred to department of labor and industry, 82A-1003
insecticide functions transferred to department of agriculture, 82A-303
Board of health, composition and appointment of members, 69-4103
biennial report to governor, 69-4106
chairman of board, 69-4104
compensation of members, 69-4104
continuation as quasi-judicial board, 82A-605
transfer of functions, 82A-603
dredge mining regulation, 82A-1503
nurse employment functions, 82A-1003
duties of board, 69-4106
legal adviser to board, 69-4111
meetings of board, 69-4104
powers of board, 69-4106
secretary of board, 69-4104
Clean Air Act, administration, 69-3904 to 69-3923—See AIR POLLUTION CONTROL
Commission on alcohol and drug dependency, 69-6201 to 69-6207
abolition of commission and transfer of functions, 82A-602
co-operation among agencies, 69-6204, 69-6206
department to administer act, 69-6205
financial assistance, 69-6204
Comprehensive state health planning powers, 69-4110.1
Consultants, employment by executive officer, 69-4109
Definition of terms, 69-4102
Division of environmental sciences, creation and functions, 82A-604
Duties of department, 69-4110
Establishment of department, 69-4101
Executive officer of department, qualifications, appointment and salary, 69-4107
powers and duties, 69-4109
removal from office, procedure, 69-4108
Food, Drug and Cosmetic Act, enforcement, 27-701 to 27-723—See FOOD AND DRUGS, Food, Drug and Cosmetic Act
Food service establishments, licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Hospital survey and construction, department as principal agency, 69-5302
powers and duties of department, 69-5303
Industrial hygiene functions transferred to department of labor and industry, 82A-1003
Information furnished to department on request, 69-4114
Inspection and correction of conditions in public buildings, 69-4118
Laws administered by department, 69-4105
Legal adviser to department, 69-4111
Local boards, general supervision by state board, 69-4502
Mental health regions, establishment by division of mental hygiene, conformity to state plan, 80-2407
Powers of department, 69-4110
Reorganization as department of health and environmental sciences, 82A-601 to 82A-609—See REORGANIZATION OF STATE GOVERNMENT, Department of health and environmental sciences
Venereal disease, departmental functions with respect to, 69-4602
Vital statistics, departmental functions with respect to, 69-4403

DEPARTMENT OF HEALTH (Continued)
Water pollution control, administration by department, 69-4805
director of water pollution control, appointment, qualifications and duties, 69-4805
domestic water supply, 69-4903

DEPARTMENT OF INSTITUTIONS
See STATE INSTITUTIONS, Department of institutions, 80-1401 to 80-1412

DEPARTMENT OF INTERGOVERNMENTAL RELATIONS
Board of aeronautics, functions, 82A-905
Board of county printing, composition and functions, 82A-904
Creation of department, 82A-901
Director as head of department, appointment, 82A-901
Functions of department, 82A-902, 82A-903

DEPARTMENT OF JUSTICE
Board of crime control continued in department, functions, 82A-1207
Creation of department, 82A-1201
Division of motor vehicles, creation, 82A-1204
functions of division, 82A-1205, 82A-1206
Functions of department, 82A-1202, 82A-1203
electrical inspection and code making functions transferred, 82A-1607
Head of department, 82A-1201

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
Board of natural resources and conservation created, composition and functions, 82A-1509
Board of oil and gas conservation as quasi-judicial board in department, 82A-1508
Conservation commission abolished, 82A-1507.1
Creation of department, 82A-1501
Director of natural resources and conservation, appointment and functions, 82A-1510
head of department, 82A-1501
Divisions created within department, 82A-1504
functions of divisions, 82A-1505, 82A-1506
Functions of department, 82A-1502, 82A-1503
Head of department, 82A-1501

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
Boards transferred to department, 82A-1602
administrative services provided to boards, 82A-1603
employment of personnel for boards, 82A-1604
functions retained by boards, 82A-1605
legal assistance provided in hearing by board, 82A-1604
membership of boards, 82A-1606
Creation of department, 82A-1601
Director as head of department 82A-1601
duties of director, 82A-1604

DEPARTMENT OF REVENUE
Director of revenue as head of department, 82A-1801
chief administrative officer of department, 82A-1804
creation of office, appointment, 82A-1804
Liquor control board abolished, functions transferred to department, 82A-1807
license decisions of department, appeal to state tax appeal board, 82A-1808
Multistate tax compact advisory committee abolished, 82A-1806
advisory council appointed by board, 82A-1803
Rural co-operative tax functions transferred to department, 82A-1802

DEPARTMENTS OF GOVERNMENT—See REORGANIZATION OF STATE GOVERNMENT; STATE DEPARTMENTS AND BOARDS

DEPOSIT
Storage deposits, applicability of Uniform Commercial Code to, 20-314

References are to Title and Section numbers

DEPOSITIONS

Criminal procedure, 95-1802
Depositions to be taken in other jurisdictions for use in Montana, subpoena authorized, M. R. Civ. P., Rule 32(e)
Errors in depositions, effect, M. R. Civ. P., Rule 32
Irregularities in depositions, effect, M. R. Civ. P., Rule 32
Justices' courts, 93-7712
Oral examination, manner of taking deposition, M. R. Civ. P., Rule 30
Pending action, scope and procedure for depositions, M. R. Civ. P., Rule 26
Pending appeal, procedure for perpetuation of testimony, M. R. Civ. P., Rule 27(b)
Perpetuation of testimony before action, M. R. Civ. P., Rule 27(a)
Persons authorized to take depositions, M. R. Civ. P., Rule 28
Stipulations to govern taking of depositions, M. R. Civ. P., Rule 29
Subpoena for taking of depositions, M. R. Civ. P., Rule 45(d)
Written interrogatories, manner of taking depositions, M. R. Civ. P., Rule 31

DEPOSITS IN COURT

Statutes govern deposits, M. R. Civ. P., Rule 67
Unclaimed deposit presumed abandoned, 67-2208—See PROPERTY, Unclaimed property

DESTRUCTIVE DEVICES

Possession in public place with felonious intent as felony, penalty, 69-1932
  definition, 69-1931

DEVELOPMENT CREDIT CORPORATION ACT

Annual statement, 15-2614
Articles of incorporation, 15-2603
  amendment, 15-2605
Board of directors, 15-2606
Capital stock, 15-2603
Certificate of incorporation, 15-2604
Corporation law, applicability of, 15-2618
Credit of state not pledged, 15-2617
Definitions, 15-2602
Deposit of funds, 15-2613
Deposits, receipt of, prohibited, 15-2613
Duration of corporation to be perpetual, 15-2615
Earnings, setting apart of portion as earned surplus, 15-2612
First meeting of corporation, 15-2608
Liability of directors and officers for losses, 15-2606
Member financial institutions
  application for membership, 15-2610
  loans to corporation, 15-2610
  stock ownership, 15-2609
  withdrawal from membership, 15-2611
Powers and privileges, 15-2603
Purpose, 15-2601
Reports to and by superintendent of banks, 15-2614
Stockholders' and members' powers, 15-2607
Stock ownership and limitations, 15-2609
Superintendent of banks, supervisory power of, 15-2614
Surplus, setting aside of portion of, 15-2612
Termination for failure to begin business, 15-2616
Votes of stockholders, 15-2607

DISASTERS

Continuity of government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Governor's power to call militia forces, 1972 Const., VI, 13
Importation of armed forces, application of legislature or governor, 1972 Const., II, 33
State general fund aid authorized, 79-2501
  implementation and administration of program, 79-2503
  maximum expenditure in biennium, 79-2502
  purposes of aid, 79-2501

References are to Title and Section numbers

DISCOVERY
Admission of facts and genuineness of documents, request for, M. R. Civ. P., Rule 36
form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 21
Criminal procedure, rules for discovery, inspection, and notice, 95-1803
Documents and papers, discovery and production, M. R. Civ. P., Rule 34
Interrogatories to parties, M. R. Civ. P., Rule 33
Physical and mental examination of persons, M. R. Civ. P., Rule 35
Probate proceedings, application of procedures to, M. R. Civ. P., Rule 1
Refusal to make discovery, effect, M. R. Civ. P., Rule 37
Tangible objects, discovery and production, M. R. Civ. P., Rule 34

DISCRIMINATION
See CIVIL RIGHTS

DISEASE
See COMMUNICABLE DISEASES

DISTRICT COURTS
Adjournments, 93-316
Calling of juries for trial of causes, 93-315
Chambers, acts and proceedings done in, M. R. Civ. P., Rule 77(b)
Conciliation court, sitting as, 36-203
powers of conciliation court, 36-205
Criminal jurisdiction, 95-301
Departments, division of district into, 93-321
Disqualification of judge
civil cases, 93-901
criminal cases, 95-1709
District boundaries, establishment and change, 1972 Const., VII, 6
District comprised of two or more counties, holding of court continuously and simultaneously in each or any county, power, 93-316
Fixing of terms where district comprises two or more counties, 93-315
Grand juries, summoning, discretion of district judge, 95-1401
Interstate agreement on detainers, district courts to function under, 94-1101-2, redes. 95-3132
Judges
absence from state forfeits judicial position, 1972 Const., VII, 10
arrest, judges privileged from, 95-616
assignment for temporary service from one district or county to another, 1972 Const., VII, 6
assignment of judges to departments, 93-321
criminal law study commission, service on, 94-1001-3, redes. 95-3133
election, 1972 Const., VII, 8
expenses outside county of residence, certification and filing, 93-314
expenses outside district, certification and filing, 93-306
indictment against, filing, 95-1410
information against, procedure for permission to file, 95-1301
judicial standards commission, 1972 Const., VII, 11
nominations confirmed by senate, 1972 Const., VII, 8
number, 1972 Const., VII, 6; 93-302
oath of office, 1972 Const., III, 3
political candidacy forfeits judicial position, 1972 Const., VII, 10
practice of law, restrictions on, 1972 Const., VII, 9; 93-902
qualifications of judges, 1972 Const., VII, 9
removal and discipline of judges, 1972 Const., VII, 11
retired judge, call for duty, 93-1130
retirement system, 93-1107 to 93-1132—See JUDGES, Retirement system
salary, 1889 Const., VIII, 29; 1972 Const., VII, 7; 93-303
selection of judges, 1972 Const., VII, 8
solicitation of compensation on account of office prohibited, 1972 Const., VII, 9
substitution of district judge for supreme court justice, 1972 Const., VII, 3
terms of office, 1972 Const., VII, 7
judges in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4
vacancies, how filled, 1972 Const., VII, 8

DISTRICT COURTS (Continued)
Jurisdiction, 1972 Const., VII, 4
criminal offenses, 95-301
rules of civil procedure do not extend or limit jurisdiction, M. R. Civ. P., Rule 82
tort actions against state, 83-701
Number of districts, establishment and change, 1972 Const., VII, 6
Open at all times, M. R. Civ. P., Rule 77(a)
Pre-trial calendar, M. R. Civ. P., Rule 16
Process extends to all parts of state, 1972 Const., VII, 4
Removal of action to federal district court, transmittal of file, M. R. Civ. P., Rule 77(e)
Reporters
appointment by judges, 93-1901
attendance to duty in person required, 93-1907
copies of proceedings furnished to parties, fees, 93-1904
fees payable by parties before trial, 93-1905
notes of testimony and proceedings, filing with clerk, 93-1902
oath of office, filing, 93-1901
objections and exceptions, writing out and filing with clerk, 93-1903
prima facie correctness of reports, 93-1908
pro tempore reporter in absence of regular reporter, 93-1907
reimbursement of expense outside county of residence, 93-1906
salary of reporter, 93-1906
transcript of evidence, admissibility, M. R. Civ. P., Rule 80
Review division of supreme court for review of criminal sentences, 95-2501 to 95-2504
Rules of practice adopted by district courts, 93-2801-4, M. R. Civ. P., Rule 83
Term of court, 93-315
Vesting of judicial power in district courts, 1972 Const., VII, 1

DISTRICT YOUTH GUIDANCE HOMES
See YOUTH GUIDANCE CENTERS, District youth guidance home, 10-1101 to 10-1111

DISTURBANCE
Schools, disturbance as misdemeanor, penalty, 75-8306

DITCHES
Municipal regulation of open ditches
declaration of nuisance, 11-4002
investigative powers of governing body, 11-4003
irrigation ditches exempt, 11-4006
notice to close and fill ditch, 11-4004
protective devices provided by owner, 11-4005
purpose of act, 11-4001
special improvement districts, 11-4006
Rural improvement districts authorized to build protection devices, 16-1601(1)
Taxability of ditches, 84-206

DIVORCE
Foreign divorce of parties domiciled in state, when not recognized, 21-150
Irreconcilable differences as ground for divorce, 21-103
Registrar of vital statistics, report to, 69-4433
judicial information included in report, 69-4434
Stay of proceedings to attempt reconciliation, 21-135.1
conciliation petition filed, 36-204
Waiting period before decree granted, 21-135.1

DOGS
Damages to livestock or poultry, liability of owner of dog, 16-4614
Guide dog, blind person's right to use in public places, 71-1306
penalty for violations, 71-1308
traffic to stop for person using guide dog, 71-1307
"Kennel" defined, 16-4602

DOGS (Continued)
Licenses
application, 16-4602
collar and license tag required, 16-4601
county commissioners may provide for, 16-4602
disposition of fees, 16-4612
fee, 16-4603
kennel license
application, 16-4602
fee, 16-4603
license year, 16-4602
municipal license tag in compliance with act, 16-4604
removal of tag when dog under immediate control of owner, 16-4601
required, 16-4601
"Owner" defined, 16-4615
Public inspection of applications on file, 16-4603
Seizure and impounding
contract with humane societies and other associations, authority for, 16-4607
contract with municipal corporations for use of impounding facilities, authority, 16-4607
county commissioners, duties, 16-4606
county pound master, appointment, 16-4607
disposition of impounded dogs, 16-4608
dogs running at large without tags, 16-4605
dogs suspected of rabies or known to have bitten human or animal, retaining, 16-4608
fee for impoundment and keep, 16-4609
fees and charges as charged against county, 16-4610
fees, payment by owner claiming dog, 16-4610
failure to pay pound fee, abandonment, 16-4611
fines, disposition, 16-4612
Violation of act constitutes misdemeanor, 16-4613

DOUBLE JEOPARDY
Constitutional prohibition, 1972 Const., II, 25
Defense of former prosecution, when allowed, exceptions, 94-6808.3 to 94-6808.5
Definition of "same transaction" and "included offense," 94-6808.1
More than one offense in same transaction, prosecution for, 94-6808.2

DRAINAGE DISTRICTS
Assessments for construction, annual installments, 89-2348
Bonds
interest rate, maximum paid, 79-2602
definition of terms, 79-2601
resolution for issuance of bonds or notes, 89-2501
signatures on, 89-2501
Improvements to land, facilities or structures subject to assessment, 89-2330
districts created for drainage purposes only, assessment to improvements not applicable, 89-2330.2
existing districts, vote of persons on assessment rolls required, 89-2330.1
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Special assessments, maximum interest paid, 79-2603
definition of terms, 79-2601
Special benefits, report and assessment of, 89-2333

DRIVER EDUCATION
See SCHOOLS, traffic education, 75-7901 to 75-7907

DRIVER LICENSE COMPACT
See OPERATORS' AND CHAUFFEURS' LICENSES, Interstate compact, 31-163 to 31-169

References are to Title and Section numbers

DRUGS AND CONTROLLED SUBSTANCES
See DEPARTMENT OF HEALTH, Commission on alcohol and drug dependency, 69-6201 to 69-6207; FOOD AND DRUGS, Food, Drug and Cosmetic Act, 27-701 to 27-723; NARCOTIC DRUGS, Dangerous Drug Act, 54-132 to 54-138
Annual registration required for manufacturers, distributors and dispensers, 54-316
denial, suspension, revocation or refusal of registration, grounds, procedure, 54-318, 54-319
exemptions from registration requirement, 54-316
federal law compliance as entitling applicant to registration, 54-317
fees to be levied and collected by board, 54-315
initial registration of prior registrants, 54-324
inspection of establishment of registrant or applicant, 54-316
limitations upon rights of registrants generally, 54-317
registration to be issued unless inconsistent with public interest, factors considered, 54-317
separate registration for each place of business required, 54-316
waiver of registration requirement by board, 54-316
Board of pharmacists to administer law, 54-302
rules to be promulgated by board, 54-315
Definition of terms, 54-301
Educational programs to be designed and conducted by board, content of programs, 54-323
Medical practitioners prohibited from dealing in drugs, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
Orders and rules not in conflict to remain in effect, 54-325
Practitioners to be registered to dispense or conduct research with dangerous drugs, 54-317
failure to register as misdemeanor, penalty, 54-327
schedule I drugs, federal registration as compliance, 54-317
Prior proceedings to continue in effect, 54-324
Research on misuse and abuse of drugs to be encouraged by board, 54-323
possession and distribution of drugs by researchers may be authorized, 54-323
withholding of names of persons subjected to research authorized, 54-323
Schedule I drugs enumerated, 54-305
additions or deletions by board authorized, 54-302
criteria for placement of drug in schedule, 54-304
order form required for distribution from one registrant to another, 54-321
reasearch practitioners, federal registration as compliance, 54-317
Schedule II drugs enumerated, 54-307
additions or deletions by board authorized, 54-302
criteria for placement of drug in schedule, 54-306
order form required for distribution by one registrant to another, 54-321
prescription required for dispensing, limitation upon refilling, 54-322
Schedule III drugs enumerated, 54-309
additions or deletions authorized, 54-302
criteria for placement of drug in schedule, 54-308
prescription required for dispensing, limitation upon refilling, 54-322
Schedule IV drugs listed and described, 54-311
additions or deletions authorized, 54-302
criteria for placement of drug in schedule, 54-310
prescription required for dispensing, limitation upon refilling, 54-322
Schedule V drugs listed and described, 54-313
additions or deletions authorized, 54-302
criteria for placement of drug in schedule, 54-312
medical purpose required for dispensing, 54-322
Scheduling and rescheduling drugs by board, considerations to be followed, 54-302
addition to or deletion of drugs from schedule, 54-302
annual republication of schedules, 54-314
exclusion of drug in conformity to federal and other state law, 54-302
names of drugs used in schedules, 54-303
Uniformity of construction, 54-326

DUE PROCESS OF LAW
Constitutional guarantee, 1972 Const., II, 17

DURESS
Affirmative defense, M. R. Civ. P., Rule 8(c)
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

E

ECONOMIC OPPORTUNITY
See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

ELECTIONS
Absentee voting and registration
absentee ballots in precincts where voting machines are used, 23-3716
absent or physically incapacitated voter, right to vote, 23-3701
application for ballot, time limit, 23-3703
disposition of application, 23-3705
form, 23-3704
constitutional requirements, 1972 Const., IV, 3
deposit of absentee ballots in ballot boxes, 23-3713
disposition of marked ballot upon return to election officials, 23-3708, 23-3709
election judges' duties, 23-3711
electors in United States service
definition, 23-3718
federal postcard application, 23-3721
oath, 23-3720
registration, 23-3719
termination of service, registration after, 23-3724
federal post card application, classification of, 23-3721
instructions for voting, 23-3706
late ballots, rejection, 23-3709
mailing ballot, 23-3706
marking ballot, 23-3707
official misconduct, 23-3717
perjury, 23-3717
record of absentee ballots, 23-3710
registration card, 23-3723
registration of voters absent from country, 23-3722
rejection of ballot upon opening absentee ballot envelope, 23-3713
registration not cancelled if elector attempted to vote, 23-3013
right to subsequently vote in person, 23-3714
school district elections, 23-3702
unopened envelope containing ballot, casting of ballot, 23-3715
voting in person before election day, 23-3712
Abuses of electoral process to be guarded against, 1972 Const., IV, 3
Administration of elections, provision for, 1972 Const., IV, 3

Alcoholic beverages
days retail beer establishments to be closed, 4-303
days retail establishments to be closed, 4-414

Arrest, electors privileged from arrest, 1972 Const., IV, 6; 23-2705, 95-616
Ballots
arrangement and rotation of names on ballot, 23-3511
city elections, duties of city clerk, 23-3502
delivery prior to opening of polls, 23-3503
elections to be by secret ballot, 1972 Const., IV, 1; 23-2602
form of, 23-3512, 23-3514, 23-3515
long-term and short-term election for same office, long-term office to precede short-term on ballot, 23-3517
number to be provided precincts, 23-3516
offices, order of, 23-3513
party designation, 23-3509
pasters for nominee filling vacancy, 23-3510
printed by registrars, 23-3506, 23-3507
printing and distribution costs, 23-3508
stub, 23-3515
uniformity, 23-3508

ELECTIONS (Continued)
Bonds
contests
grounds for challenge, 23-4201
hearing, 23-4202
creation or increase in municipal or school indebtedness, qualifications for voting, 84-4711
limitation of actions and defenses relating to state and municipal bond issues, 93-2612
Campaign contributions and expenditures to be reported, 23-4730
contents and time of filing, 23-4730
district court jurisdiction, 23-4760
failure to file, penalty, 23-4730
political committees and other persons to keep accounts of receipts and expenditures, 23-4731
inspection by opposing political party authorized, 23-4731
Candidates for public office, eligibility, 1972 Const., IV, 4
Challenging electors
grounds, 23-3611
how determined, 23-3613
proceedings upon determination, 23-3616
list of challenges, 23-3617
oaths of persons challenged, 23-3612
person refusing to be sworn, vote to be rejected, 23-3614
trial by election judges at time of challenge, 23-3615
Congressmen
certificate of election, 23-4403
general election, chosen at, 23-4401
residency required, 23-4404
vacancy in office, 23-4402
Constitutional amendments
attorney general's summary placed on ballot, 37-104.1
printing and publication of proposed amendments, 23-2802
Constitutional convention question to be submitted each twenty years, form of ballot, 1972 Const., XIV, 3; 23-4801, 23-4802
Contests of bond elections
grounds for challenge, 23-4201
hearing, 23-4202
Conventions to ratify proposed amendments to constitution of the United States, 23-4601
ballot form, 23-4605
certificate of result, 23-4609
compensation of delegates and officers, 23-4608
delegates, 23-4602
election of delegates, 23-4602
determination of election results, 23-4604
nomination of delegates, 23-4603
federal law, superseding effect of, 23-4611
officers and procedures, 23-4607
qualifications of petitioners and electors, 23-4610
quorum, 23-4607
time for holding, 23-4606
Corrupt Practices Act, preservation of statements of expenditures by officer with whom filed, 23-4736
County bond issue elections, electors, 16-2026
Definitions, 23-2601
Election judges and clerks
appointment, 23-3201
assistance to disabled electors, 23-3609
choosing, manner of, 23-3202
compensation of judges and clerks, 23-3207
continuation until successors appointed, 23-3203
duties, 23-3201

ELECTIONS (Continued)
Election judges and clerks (Continued)
instruction of judges and clerks, 23-3206
notices of election, posting of, 23-3204
notification of appointment, 23-3204
number of judges and clerks, 23-3201
oaths and their administration, 23-3205
vacancies, 23-3203
Election laws, distribution of, 23-2904
Election precincts, 23-3101
polling place, designation of, 23-3103
ward boundaries, 23-3102
Electors
arrest immunity, 1972 Const., IV, 6; 23-2705, 95-616
presidential electors, 23-4301 to 23-4307—See Presidential electors, below
qualifications, U. S. Const., Amd. 26; 1889 Const., IX, 2; 1972 Const., IV, 2; 23-2701
elections on constitutional amendments, 23-4610
Electronic voting systems
approval of marking device or automatic tabulating equipment, 23-3906
ballot information, 23-3904
closing polls, procedure upon, 23-3905
damaged or defective ballots, 23-3905
definitions, 23-3902
election laws in general, applicability of, 23-3907
paper ballot, elector may request, 23-3903
purpose of act, 23-3901
returns, 23-3905
rules, 23-3906
testing of automatic tabulating equipment, 23-3904
use, where authorized, 23-3903
voting booths, 23-3904
write-ins, 23-3904
Executive officers of state, terms, elections, qualifications, 1972 Const., VI, 1 to 3
Free exercise of suffrage guaranteed, 1972 Const., II, 13
General election, time for holding, 23-2604
Governor-elect, orderly transition of power to, 82-1311 to 82-1314
Initiative measures, attorney general's summary placed on ballot, 37-104.1
Justices of supreme court and district courts
each vacancy a separate and independent office for election purposes, 23-4501
endorsement by political party unlawful, 23-4511
forfeiture of judicial position, 1972 Const., VII, 10
incumbent justices and judges, forms of ballot for retention in office, 23-4510.1, 23-4510.2
judicial primary ballots, 23-4505, 23-4506
separate counting and canvassing, 23-4507
nominations, 1972 Const., VII, 8; 23-4502
certification of candidates' names, 23-4504
declarations, 23-4503
fee, 23-4503
highest vote in primary, 23-4508
register of candidates for nomination, entry on separate page of, 23-4504
tie vote, 23-4509
political party endorsement unlawful, 23-4511
qualifications, 1972 Const., VII, 9
vacancies after primary, 23-4510
Justices of the peace, 1972 Const., VII, 5
Legislators, election, terms and qualifications, 1972 Const., IV, 3, 4
election and qualifications of members judged by each house, 1972 Const., V, 10
Local government alternative form submitted to electors, 1972 Const., XI, 9
county government optional form, officers to be elected, 1972 Const., XI, 3
self-government charters, 1972 Const., XI, 5
Nonpartisan nomination and election of judges, 23-4501 to 23-4511—See Justices of supreme court and district courts, above

ELECTIONS (Continued)
Plurality of votes elects, 1972 Const., IV, 5
Political parties
central committees, 23-3403 to 23-3405
committeemen, 23-3401, 23-3402
convention expenses, payment of, 23-3407
powers, 23-3406
state conventions to nominate presidential electors, payment of delegates to, 23-3407
Polling place, designation of, 23-3103
Polls
announcement of voter's name, 23-3618
assistance to disabled electors, 23-3609
poll watchers, 23-3618
proclamation prior to opening or closing, 23-3602
prohibited conduct, 23-3605
putting ballot in box, 23-3608
election judge only to put ballot in box, 23-3607
voting—See Voting, below
voting booth, 23-3604
Precinct registers
copies of, 23-3028
entry of name upon, charge for, 23-3027
marking and signing at time of voting, 23-3610
Presidential electors
compensation, 23-4306
list of electors elected, 23-4303
list of persons voted for, 23-4305
meeting and voting of electors, 23-4304
nomination, 23-4302
returns and canvassing, 23-4303
to be elected, 23-4301
vacancies, 23-4307
votes for president and vice-president of each party counted for candidates for electors of the party, 23-4302
Primary nominating election
abstracts of votes, 23-3313, 23-3314
ballots, 23-3308, 23-3309
candidates to be selected, 23-3301
certificates of nomination, 23-3318, 23-3319
number of signatures required to be determined by secretary of state for certain candidates, 23-3318.1
cities over certain size, procedure in, 23-3302
contesting nominations, 23-3316
counting of ballots, 23-3310
date for holding, 23-3301
declaration of nomination, 23-3304, 23-3305
declining nomination, 23-3321
election clerks and judges
compensation, certificate for, 23-3313
duties, 23-3310 to 23-3312
errors, 23-3315
independent candidates in districts embracing census enumerator divisions, signatures needed for nominating petitions, 23-3318.1
notice, 23-3303
penalty for violation of act, 23-3317
political parties, 23-3320
precinct register, marking, 23-3610
register of candidates, 23-3306
registrar's or city clerk's duties, 23-3307
removal of candidate from office, 23-3317
secretary of state
canvass by, 23-3314
duties, 23-3307

References are to Title and Section numbers

ELECTIONS (Continued)
Primary nominating election (Continued)
tally sheets, 23-3311
tie, decision by lot in event of, 23-3313
vacancies, 23-3321
violation of act, penalty for, 23-3317
wrongful acts, 23-3315
Proclamations
county commissioners, 23-2903
governor, 23-2901
publication, 23-2902
Questions submitted to popular vote, advertisement of, 23-2801
Recounts
application for, 23-4101
considering several applications together, 23-4108
certificate of election
certification of recount results, 23-4117
effect of recount on, 23-4112
issuance by state board of canvassers, 23-4118
conditions under which recount to be made, 23-4103
counting of votes
determining total vote cast, 23-4113
persons entitled to appear at recount, 23-4116
sealing recounted ballots, 23-4111
county recount board
certification of result, 23-4117
composition, 23-4114
meetings, 23-4115
district court
disqualified judge, substituting for, 23-4105
jurisdiction retained until cause finally determined, 23-4105
limiting recount to certain precincts, 23-4106
service upon other candidate, opportunity to be heard, 23-4110
expense of, 23-4107
apportionment of, 23-4108
failure to comply with provisions for counting votes, presumption of incorrectness from, 23-4104
limitations on recount, 23-4102
manner of, 23-4109
state and county charges for expenses, 23-4122
state board of canvassers, reconvening of, 23-4118
issuance of new certificate of election or nomination, 23-4118
tie votes, 23-4119 to 23-4121
Referendum measures, attorney general's summary placed on ballot, 37-104.1
Registrar
city elections, duties of city clerk, 23-3502
county clerk and recorder as ex officio registrar, 23-3002
deputy registrars, 23-3003
distribution of copies of election laws, 23-2904
election judges to be notified of their appointment, 23-3204
hours office open for registration, 23-3005
sufficient help and supplies to be provided by commissioners, 23-3026
Registration
cancellation of registry
felony conviction lists sent to registrars, 23-3014
for failure to vote, 23-3013
for other reasons, 23-3014
reregistration, 23-3013, 23-3014
challenges, 23-3015
closing of registration prior to election, 23-3016
registration during that period, 23-3017
constitutional requirements, 1972 Const., IV, 3

ELECTIONS (Continued)
Registration (Continued)
elections on incurring of certain state indebtedness, notice and closing of registration for, 23-2704
elector's identity, 23-3018
erroneous omission of elector's name from precinct register, 23-3020
felony provision, 23-3006
hours of registration, 23-3005
infirm electors, registration at residence, 23-3007
list of registered electors, 23-3012
list of registered electors shown on precinct registers, 23-3023
method of registering, 23-3006
absent electors in United States service, 23-3006
name of elector in precinct register as prima facie evidence of right to vote, 23-3018
naturalized citizens, 23-3021
new-voter list, submission to major parties by highway patrol, 23-3001
poll booth registration authorized, 1972 Const., IV, 3
precinct registers
compelling entry of name, 23-3019
list of registered electors shown on, 23-3023
marking after elector has voted, 23-3610
omission of name, 23-3020
preparation of, 23-3012, 23-3024
right to vote, name in register as prima facie evidence of, 23-3018
signature of elector required, 23-3018
affidavit in behalf of those unable to sign, 23-3018
previous registration, inquiry as to, procedure, 23-3011
prospective voter not qualified at time of registration, 23-3008
registration cards, 23-3005
registry book and card index, 23-3004
residence, rules for determining, 23-3022
school district to be shown in registration, 23-3004.1
transferring registry
elector's duties, 23-3009
registrar's duties, 23-3010
United States citizenship, 23-3008
Residence requirements, 1972 Const., IV, 3
rules for determining as prerequisite to registration or voting, 23-3022
Returns
canvass
commenced as soon as polls closed, 23-4001
method of, 23-4002
public and without adjournment, 23-4001
counting
manner of, 23-4003
rejected ballots, marking of, 23-4004
county canvass
commissioners as board of county canvassers, 23-4009
nonessentials to be disregarded, 23-4011
public, 23-4011
registrar as clerk of board of county canvassers, 23-4009
results
certificates of election, 23-4014
declaration of persons elected, 23-4013
entered on record, 23-4012
statement, contents, 23-4012
tie, certification of, 23-4013
time of, 23-4010
plurality of votes elects, 1972 Const., IV, 5
pollbooks, signing and certifying of, 23-4005
registrar, items to be sent to, 23-4006
disposition of, 23-4007, 23-4008

ELECTIONS (Continued)
Returns (Continued)
state canvass
board, 23-4016
transfer to office of secretary of state, 82A-2102
commissions
governor to issue to person elected, 23-4018
secretary of state to issue governor's commission, 23-4018
defects in returns, 23-4019
messenger may be sent for returns, 23-4017
state returns, how made and transmitted, 23-4015
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
School elections, 75-6401 to 75-6423—See SCHOOL DISTRICTS AND TRUSTEES, Elections
annual election of trustees, 75-5912 to 75-5915
Secret ballot required, 1972 Const., IV, 1
Supplies
city elections, duties of city clerk, 23-3502
election return forms, 23-3504, 23-3505
items to be furnished by commissioners, 23-3501
voting machines, 23-3810
Time
general elections, time for holding, 23-2604
hours for opening and closing of polls, 23-2605
Violations
attempting to vote at second polling place after vote has been rejected, 23-3025
deceiving illiterate, blind or disabled voter while assisting him, 23-3812
election day, prohibited conduct on, 23-3605
in general, 23-2606
judicial candidates, endorsement by political party, 23-4511
primaries, 23-3317
registration, 23-3029
voting machines, 23-3820, 23-3821
Voting
absent or incapacitated voters, 23-3701 to 23-3723—See Absentee voting and registration, above
announcement of voter's name, 23-3618
assistance to disabled electors, 23-3609
challenging elector—See Challenging electors, above
delivery of ballots to elector, 23-3603
instruction cards, 23-3601
method of, 23-3606
poll watchers, 23-3618
precinct register book, marking of, 23-3610
proclamation prior to opening or closing polls, 23-3602
prohibited conduct, 23-3605
putting ballot in box, 23-3608
only election judge to place ballot in ballot box, 23-3607
voting booths, 23-3604
Voting machines
approval, specifications required for, 23-3802
assistance to illiterate, blind or disabled voters, 23-3812
punitive provision for deceiving elector, 23-3812
counting votes, 23-3813
procedure after count, 23-3814
election board, composition of, 23-3806
election judges, instruction by registrar, 23-3807
election laws in general, applicability of, 23-3822
exhibition and demonstration, 23-3809
experimental use, 23-3817
information concerning machine, publication of, 23-3808
machine breakdowns, 23-3818
paper ballot, elector may request, 23-3818
paper ballots for voting on certain money issues, 23-3819

ELECTIONS (Continued)
Voting machines (Continued)
payment for, 23-3803
penalties
causing false statement, certificate or return to be signed, 23-3821
causing incorrect vote, 23-3821
deceiving illiterate, blind or disabled voters while assisting them, 23-3812
tampering with machine, 23-3820
placement of machines, 23-3806
preparation for use, 23-3804
registrar to instruct election judges, 23-3807
registry list, 23-3811
return sheets, 23-3815
secretary of state's duties, 23-3801
supplies, 23-3810
tally sheets, disposition of, 23-3815
time voter may remain in booth, 23-3806
write-ins, 23-3805
disposition of, 23-3815

ELECTRICIANS
Appeals from state electrical board, 66-2813
Appliance sales and connections exempt from license requirements, 66-2812
Apprentices, registration with board, 66-2817
exemption from license requirement, 66-2815
scope of work permitted apprentice, 66-2812
Definition of terms, 66-2803
Exemptions from provisions of act, 66-2812
License required to work as electrician or contractor, 66-2806
annual license fees, 66-2815
contractors to be licensed annually, 66-2814
educational requirements for license, 66-2807
examination of applicants for license, 66-2807
exemptions from license requirements, 66-2812
experience required for license, 66-2807
schooling substituted for experience, 66-2815
expiration of licenses, 66-2807
fees for licenses
contractor's annual fee, 66-2814
disposition and use of fees, 66-2819
examination fees, 66-2815
municipal licensees, licensing without examination, 66-2811
previously qualified electricians, licensing without examination, 66-2816
reciprocal licensing of nonresidents, 66-2809
renewal of licenses, 66-2807
temporary permits, issuance and duration, 66-2810
unauthorized use of designation as electrician, 66-2808
National Electrical Code to govern installations, 66-2802
Penalties for violation of act, 66-2820
Purpose of electrical safety law, 66-2802
Receipts under act, deposit and use, 66-2819
Short title of act, 66-2801
State electrical board renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment and terms of board members, 66-2804
compensation of board members, 66-2804
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
inspection functions transferred, 82A-1203
legal assistance in hearings by board, 82A-1604
oath of members of board, 66-2805
organization and powers of board, 66-2805
retention of functions by board, 82A-1605
Violations of act, penalties, 66-2820

ELECTRIC LINES
Fiber glass insulators used in construction, 24-107
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Tampering with or tapping lines, penalty, 94-3203
Underground facilities
conversion to underground, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion
excavations, protection from, 32-4801 to 32-4808—See STREETS, Underground facility

ELECTRIC SUPPLIERS
Territorial integrity
agreements between suppliers waiving rights to serve premises, 70-504
appeal to supreme court, 70-507
citation of act, 70-501
definition of terms, 70-502
district court jurisdiction of disputes, 70-506
appeal to supreme court, 70-507
industrial and commercial premises, special provisions relating to, 70-503
injunction to enforce rights of suppliers, 70-507
municipally annexed areas, rights and restrictions on suppliers in, 70-505
outlying areas, rights and restrictions of suppliers in, 70-503
previous contracts and construction protected, 70-508
remedies of suppliers for violations, 70-507

EMBALMERS
See MORTICIANS AND FUNERAL DIRECTORS, 66-2701 to 66-2717

EMINENT DOMAIN
Airport authority exercising power, procedure for, 1-910
Answer of defendant, filing and contents, 93-9910
Assessment of compensation, allowance for removal of personal property, 93-9913
Award exceeding final offer of condemnor to include necessary expenses of litigation of condemnee, 93-9921.1
Commissioners, appointment and meeting, 93-9912
Constitutional requirement for just compensation, 1972 Const., II, 29
Flood control projects, acquisition by county or municipality for, 89-3303
Preliminary condemnation order, 93-9911
Relocation assistance for federally assisted projects, 93-9927 to 93-9944—See RELOCATION ASSISTANCE
Relocation assistance for persons affected by state highway department's land acquisitions, 32-3921 to 32-3931—See HIGHWAYS, BRIDGES AND FERRIES, Right of way acquisition for state highways
no new element of condemnation damages created, 32-3931
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Strip or open pit mining of coal not public use, 93-9902, 93-9902.1
Urban renewal, power of municipality, 11-3908

EMPLOYERS AND EMPLOYEES
Discrimination in employment, freedom from as civil right, 64-301
definition of terms, 64-302
denial of right to employment as misdemeanor, 64-303
Occupational disease act, 92-1301 to 92-1368
Right to pursuit of life's basic necessities, 1972 Const., II, 30
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS

EMPLOYMENT AGENCIES
Advertising to indicate status as employment agency, 41-1433
Citation of act, 41-1417
Complaints against agencies, investigation, 41-1423
Contract with applicant for employment, form and contents, 41-1420
approval by director required, 41-1421

EMPLOYMENT AGENCIES (Continued)
Definition of terms, 41-1418
Exclusiveness of chapter, 41-1438
False advertising prohibited, 41-1433
Fees, when chargeable to applicants for employment, 41-1431
duplicate referrals to same employer, entitlement to fee, 41-1433
excessive fees, return by agency, 41-1432
registration fee prohibited, 41-1433
splitting of fees prohibited, 41-1433
Inducing termination of employment prohibited, 41-1433
Inspection powers of director, 41-1419
Interviews arranged, request from employer required, 41-1422
Labor dispute, referrals prohibited, 41-1433
License required for conduct of business, 41-1424
application for license, contents, 41-1426
bond or deposit required of licensee, 41-1425
change in management of licensee, consent required, 41-1428
denial, suspension or revocation of license, grounds for, 41-1429
display of license, 41-1433
expiration of license, 41-1427
fees for licenses, 41-1430
disposition of fees, 41-1438
political subdivision licensing permitted, 41-1438
transfer of license, consent required, 41-1428
Nonresidents, jurisdiction, 41-1437
Political subdivision licenses permitted, 41-1438
Records required of agencies, 41-1419
Rules and regulations, 41-1423
Subpoena power of director, 41-1423
Violation of requirements
assurance of discontinuance, acceptance and approval, 41-1435
civil penalty for violation of court order, 41-1436
prosecuting officials, reference to, 41-1434
unlicensed operation as misdemeanor, 41-1424

EMPLOYMENT SECURITY
See UNEMPLOYMENT COMPENSATION

ENGINEERS AND LAND SURVEYORS
Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
Board of registration renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
continuation in office of board members, 82A-1606
employment of personnel for board, 66-2333, 82A-1604
legal assistance in hearings by board, 82A-1604
moneys received by board, deposit and use, 66-2333
report of board to governor, 66-2334
retention of functions by board, 82A-1605
secretary of board, salary, 66-2333
Co-ordinate system, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM
Corner recordation act, 67-2001 to 67-2010—See PROPERTY, Real property, corner recordation
Corporations for practice of professional engineering, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Investment advice exempt from securities act, 15-2004
Unlicensed practice a public nuisance, 66-2332

ENVIRONMENTAL POLICY
Citation of act, 69-6501
Constitutional requirement for protection and improvement, 1972 Const., IX, 1
Consultation and co-operation wth other agencies, 69-6517

ENVIRONMENTAL POLICY (Continued)
Council on environmental quality, composition, 69-6508
meetings of council, 69-6510
officers of council, 69-6509
per diem and expenses of council members, 69-6510
qualifications of appointive members, 69-6508
terms of office of members, 69-6509
Declaration of state policy, 69-6503
specific statutory obligations of state agencies unaffected, 69-6506
Directions to state agencies on implementation of policies, 69-6504
specific statutory obligations unimpaired, 69-6506
Employment of personnel by director, 69-6512
duties of staff in general, 69-6514
Examination of records of government agencies, 69-6515
Executive director, appointment and qualifications, 69-6511
duties of director in general, 69-6514
removal from office, 69-6513
term of office, 69-6513
Hearings by council, 69-6516
Purpose of act, 69-6502
Reclamation of lands, 1972 Const., IX, 2
Resource indemnity trust account tax, 84-7001 to 84-7013—See TAXATION
Review of statutory authority and recommendations to governor and council, 69-6505
Right to clean and healthful environment, 1972 Const., II, 3
Subpoena powers of council, 69-6516
Supplementary nature of policies and goals set forth in act, 69-6507

EQUAL PROTECTION OF THE LAWS
Constitutional guarantee, 1972 Const., II, 4

ESCHEATED ESTATES
See ESTATES AND PROBATE PROCEEDINGS, Escheated estates

ESTATES AND PROBATE PROCEEDINGS
Appraisers of estate, appointment and compensation, 91-2202
Contest of probate
motions filed against contest, 91-901
petition filed after admission to probate, 91-1101
time within which contest to be filed, 91-1107
Conviction of treason not cause of loss of property to relatives or heirs of convicted, 1972 Const., II, 30
Deposits at financial institutions, withdrawals by surviving spouse, 91-2212
affidavit discharges institutions from liability, 91-2213
Devise or bequest to trustee of inter vivos trust created by testator, validity, 91-321
Escheated estates
attorney general's duties, expenses, 91-512
deposit of money and property in agency fund, 91-502, 91-523
holding by state treasurer subject to claims, period, 91-502
investment of moneys pending proceedings, 91-504
sale of property
agent, property held by, 91-507
department of revenue, sales by, how conducted, 91-508
order by court for sale, 91-504
personal property, manner of sale, 91-505
real property, manner of sale, 91-506
unclaimed property subject to escheat, 91-526
Final settlement, hearing on failure to distribute estate and discharge executor or administrator within two years, 91-3906
Real estate brokers' act, exemptions from, 66-1926
Suicide, estates descend or vest as in case of natural death, 1972 Const., II, 30
Summary proceedings in lieu of probate
act inapplicable to pending estates, 91-5311
administration of estate in usual manner, 91-5310

ESTATES AND PROBATE PROCEEDINGS (Continued)
Summary proceedings in lieu of probate (Continued)
combination of proceedings to terminate life estate or joint tenancy with proceedings to set aside property, 91-5303
decree, effect of, 91-5308
existing statutes not repealed, 91-5312
jurisdiction, collateral attack on, 91-5309
net value of estate, determination of, 91-5302
notice of hearing, 91-5305
petition to set aside estate, 91-5304
notice, 91-5306
setting aside of estate to surviving spouse or minor child, 91-5301
special appraiser, 91-5307
Support obligations of father of illegitimate child limited to those accrued before death of father, 93-2901-4
Validation of sales of property, 91-4324 et seq.

ESTOPPEL
Affirmative defense, M. R. Civ. P., Rule 8(c)
Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

ETHICS
Code prohibiting conflicts of interest involving legislators and other public officials, 1972 Const., XII, 4

EVIDENCE
Accident reports confidential, 32-1213
Amendment of pleadings to conform to evidence, M. R. Civ. P., Rule 15(b)
Certificate of compliance or noncompliance with provisions of occupational disease act, 92-1356
Criminal procedure, production and suppression of evidence, 95-1801 to 95-1806—See CRIMINAL PROCEDURE, Evidence
Depositions, M. R. Civ. P., Rules 26 to 32—See DEPOSITIONS
criminal procedure, 95-1802
Discovery, M. R. Civ. P., Rules 33 to 37—See DISCOVERY
criminal procedure, 95-1803
Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46
Harmless error in admission or exclusion, effect on judgment or order, M. R. Civ. P., Rule 61
Interpreters, M. R. Civ. P., Rule 43(f)
Motions, evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)
Notices, construction according to ordinary acceptation of terms, 93-401-22
Offer of proof, recording in case evidence excluded, M. R. Civ. P., Rule 43(c)
Official records, method of proof, M. R. Civ. P., Rule 44
Pre-trial conference, agreements as to evidence, M. R. Civ. P., Rule 16
Privileged communications between psychologist and client, 66-3212
Radar concerning motor vehicle violations, 32-2150.1
Stenographic transcripts of previous evidence, M. R. Civ. P., Rule 80
Subpoena for production of evidence, M. R. Civ. P., Rule 45(b)
Variance from pleadings, amendment of pleadings, M. R. Civ. P., Rule 15(b)
Voluntary partial payment of damage claim not construed as admission, waiver or release, 93-2201-9
excess of payment over judgment not recoverable, 93-2201-9
judgment to be credited with amount of payment, 93-2201-9
legislative policy, 93-2201-7
nonseparability of provisions, 93-2201-10
"person" defined, 93-2201-8
recoverable damages not reduced by partial payment, 93-2201-9
voluntary payment inadmissible on trial of damage action, 93-2201-9

EXAMINERS, STATE BOARD OF
Composition of board, 82-1101
Liquidated claims not to be processed by board, 82-1101
Record of proceedings, 82-1105

References are to Title and Section numbers

EXAMINERS, STATE BOARD OF (Continued)
Reorganized board, functions retained, 82A-207
transfer of functions, 82A-203

EXCHANGE
Uniform Commercial Code, applicability, 74-505

EXECUTION
Compensation under occupational disease act exempt from, 92-1329
Delivery of possession, writ to secure, M. R. Civ. P., Rule 70
Documents of title covering goods, surrender or injunction required for execution against, 87A-7-603
Exemptions, liberal laws to be enacted, 1972 Const., XIII, 5
Game wardens' retirement benefits, exemption from levy, 68-1420
Judges' retirement benefits, exemption from levy, 93-1126
Partnership interest, execution against, 93-5811
Sales under execution validated despite defects, 93-5846
Statutes govern execution, M. R. Civ. P., Rule 69
Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
Supplementary proceedings, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A
Teachers' retirement system benefits exempt from execution, 75-6215
Unit ownership property, application of exemptions to, 67-2341
Waiver of statutory exemptions in unsecured note not enforceable, 93-5813.1

EXECUTION OF SENTENCE IN CRIMINAL CASES
See CRIMINAL PROCEDURE, Sentence and judgment, execution of sentence, 95-2301 to 95-2312

EXECUTIVE BRANCH
See GOVERNOR; LIEUTENANT GOVERNOR; PUBLIC OFFICERS AND EMPLOYEES; REORGANIZATION OF STATE GOVERNMENT; SECRETARY OF STATE; STATE AUDITOR; SUPERINTENDENT OF PUBLIC INSTRUCTION

EXECUTORS AND ADMINISTRATORS
Action brought without joining beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Bond required, exceptions, 91-1702
Bulk Transfer chapter inapplicable to sales by, 87A-6-103
Final settlement, hearing on failure to distribute estate and discharge executor or administrator within two years, 91-3906
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Justices and judges not to act as executor or administrator for compensation, 93-902
Real estate brokers' act, exemptions from, 66-1926
Validation of sales of property, 91-4324 et seq.

EXEMPTIONS FROM EXECUTION
See EXECUTION

EXPERIMENT STATIONS
Fertilizer educational and experimental programs, 3-1731
assessments allocated for support of program, 3-1730
Forest and conservation station, reports and disposition of income, 28-304

EXPLOSIVES
Possession in public place with felonious intent as felony, penalty, 69-1932
definition, 69-1931

EX POST FACTO
Laws prohibited, 1972 Const., II, 31

FACTORS
Lien of factors, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS

FAIR TRADE
Cigarette pricing, 51-301 to 51-314—See CIGARETTE SALES

FEES
Boiler engineer's license, 69-1512
Clerk of district court, enumeration, 25-232
  naturalization fees paid to county treasurer for credit to general fund of county, 25-210
  probate proceedings, 25-233
Constables, enumeration, 25-309
Cooperative associations
  amendment of articles, filing, 14-204
  articles of incorporation, filing, 14-201
  certificate of incorporation, issuance, 14-204
Cooperative marketing associations, filing fees, 14-422
County clerks, enumeration, 25-231
Insurance code, fees collectible under, 40-2726
Jurors' fees, 25-401
Justices of peace, fees collected by
  civil actions, 25-301
  criminal actions, 25-310
  remittance to county treasurer, retention of certain fees authorized, 25-311
Legislative proceedings, fee for receiving one complete set of, 43-902
Recording marks and brands of livestock, 46-609
Rural electric and telephone cooperatives, filing fees, 14-527
Secretary of state, fees collectible by enumerated, 25-102
Water users' associations exempt from payment, exception, 25-110
Witnesses' fees, 25-404

FELLOW SERVANT RULE
Affirmative defense, M. R. Civ. P., Rule 8(c)

FIDUCIARIES
Institutional funds management, 86-801 to 86-809—See MANAGEMENT OF INSTITUTIONAL FUNDS
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Validation of sales of property, 91-4324 et seq.
Voting of corporate shares, 15-2231

FINE ARTS' COMMISSION
Commission abolished, 44-528—See HISTORICAL SOCIETY OF MONTANA

FINES
Appeal, stay of execution, 95-2406
County school fund, fines paid into, 75-6912
Disposition, 95-2228
  juvenile traffic offenders, collections from, 95-2229
Excessive fines prohibited, 1972 Const., II, 22
Execution of, 95-2302
Imposition of, 95-2206
Lien of judgment to pay fine, 95-2208
Remission by governor, 1972 Const., VI, 12

FIREARMS
Children, use of firearms by prohibited, 94-3579
Concealed weapons, immigration and naturalization service officers may carry without permit, 94-3527
Purchase of rifles and shotguns, 94-3578.1, 94-3578.2
Right to bear arms, concealed weapons prohibited, 1972 Const., II, 12

FIRE DISTRICTS
County attorney to act as counsel, 16-3101
Examination of books by state examiner, 82-1008

FIRE ESCAPES AND ALARMS
Permits for construction outside incorporated municipalities, fees, 69-1808
Plans of construction submitted to state fire marshal, 69-1808

FIRE HAZARDS
Hunting and fishing, closing of area to, 26-345
Proceedings for abatement, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Sawmill waste, 28-119

FIRE MARSHAL, STATE
Abolition of office and transfer of functions, 82A-1202
Acting fire marshal, 82-1208
Advisory commissions, appointment, members, 82-1201
Appointment and qualifications, 82-1201
Employees, appointment of assistants and clerical employees, 82-1208
Examination of buildings, authority to enter, 82-1218
Fish and game wardens as ex officio fire wardens, 26-110.1
Investigation of fires, 82-1209
Powers, 82-1202
Rules and regulations, promulgation of, 82-1202
  hearings, notice, publication, adoption, effective date, 82-1202.2
  rules to be reasonable, 82-1202.1
  standards of fire protection adopted, 82-1202.1
  violation a misdemeanor, 82-1202.1
Special deputy fire marshals, 82-1208

FIRE PREVENTION ADVISORY COMMISSION
Abolition of commission, 82A-1208
Appointment by commissioner of insurance, members, 82-1201

FISH AND GAME
Acquisition, importation and propagation of fish, game, game birds and fur-bearing animals authorized, 26-104.4
Agents for selling licenses, compensation, inspection of accounts, 26-222
Aquatic insects, commercial exportation prohibited, 26-708
Archery regulations governing use of livestock and vehicles, 26-104.3
Big-game hunting
  dogs, use in hunting mountain lion, 26-303.5
  policy of state, 26-303.1
  private property, permission required for hunting on, 26-303.3
  violation of provisions as misdemeanor, 26-303.4
Checking stations for inspection of licenses, animals and fish authorized, 26-137
  licenses, game or fish to be produced for inspection, 26-138
Clothing worn by big game hunters and guides, 26-302
Commission and functions continued, 82A-2004
  definition, 26-101.1
  director as secretary, 26-106
  head of department, 82A-2001
  officers of commission, 26-103
  plans for construction projects, 26-119
  principal offices, 26-103
Construction projects affecting fish and game
  alternative plans and recommendations by fish and game commission, 26-1504
  arbitration of disputes, 26-1505
  assistance by fish and game commission in preparing plans, 26-1503
  emergency conditions, exception to requirements, 26-1506
  federal actions, objections to, 26-1508
  insufficiency of plans, notice to responsible agency, 26-1503
  investigation of plans by fish and game commission, 26-1503
  irrigation projects exempt from requirements, 26-1507

FISH AND GAME (Continued)
Construction projects affecting fish and game (Continued)
notice to be given to fish and game commission, 26-1502
plans and specifications to be furnished fish and game commission, 26-1502
policy of state, 26-1501
refusal by applicant to modify plans, 26-1505
vested water rights preserved, 26-1506
Contests based on size of animals unlawful, 26-811
Co-operative agreements for research, training and other projects authorized, 26-104.7
Definitions, 26-101.1, 26-201
Department of fish and game created, 82A-2001
aerial tramway safety board, department substituted for, 82A-2005
commission as head of department, 82A-2001
composition, qualifications of members, designation as quasi-judicial board, 82A-2004
definition, 26-101.1
director, appointment, qualifications, term, removal, 82A-2003
fish hatcheries, powers and duties in respect to, 26-117
functions of department, 82A-2001.1
outfitters' council, creation, composition, qualifications and terms of members, allocation to department, 82A-2005
passenger tramway safety board, department substituted for, 82A-2005
Director as secretary of commission, powers, duties, compensation, 26-106
Districts, division of state into, 26-104.3
opening and closing of seasons in districts, 26-104.3 (3), (4)
Educational and biological programs authorized, 26-104.7
Endangered species, 26-1801 to 26-1809
citation of act, 26-1801
construction of act, 26-1809
definition of terms, 26-1802
human health, removal, capture or destruction of species authorized for protection of, permit required, 26-1806
imported wildlife, 26-1809
legislative policy, 26-1803
list of endangered species to be recommended by commission to legislature, 26-1805 (1)
modification of list, effect, 26-1805 (4)
review of list by department, 26-1805 (2)
unlawful to take species on state or federal list, 26-1805 (3)
management measures to be determined upon investigation by department, 26-1804
regulations to be issued by department, 26-1804 (1)
officers authorized to enforce act, 26-1808
programs for management of species to be established by director, 26-1806
acquisition of land or aquatic habitat authorized, 26-1806 (1)
agreements with federal agencies, political subdivisions and private persons, 26-1806 (2)
co-ordination with other programs by governor, 26-1806 (3)
property protection, removal, capture or destruction of species authorized, permit required, 26-1806 (5)
regulations of commission, 26-1807
limitations established by regulations, 26-1804
scientific, zoological or educational purposes, taking of species for, 26-1806 (4)
severability of provisions, 26-1809
unlawful acts, 26-1804
violation as misdemeanor, 26-1808
wildlife seized, forfeiture to state, disposition, 26-1808 (3)
Exemptions from general provisions, 26-215
Federal aid moneys, deposit and use, 26-121
Fish
caged fish, placement in public waters, 26-813, 26-814
methods of taking, 26-332
minors not required to have license, 26-215

References are to Title and Section numbers

FISH AND GAME (Continued)
Fish (Continued)
reciprocal privileges granted to licensees of bordering states, 26-225
bodies of water covered by reciprocal privileges, 26-227
devices and equipment used under reciprocal privilege, 26-226
rules and regulations, 26-228
violations as misdemeanor, 26-228
restrictions concerning possession and sale, 26-332
Fish hatcheries, game farms and other property, use of funds for construction, maintenance and operation authorized, 26-104.4
Fishing reservoirs, rules and regulations concerning health, safety and protection, 26-104
Fish ladders to be installed and maintained at expense of owners of dam or other obstruction, 26-104.5
Furbearing animals, closed and open season, 26-321
Gates of the Mountain game preserve, 26-1128
Grizzly bear
policy declaration, 26-307.2
regulatory powers of commission, 26-307.3
scientific purposes, delivery of parts of grizzly bear to commission for, 26-307
waiting period for new license after taking grizzly bear, 26-202.2
Guides, 26-908 to 26-922—See Outfitters and guides, below
Injuring, wounding, or killing person, loss of hunting privileges and licenses unless assistance rendered, 94-35-269
Irrigation ditches, screens or wheels to be installed to prevent fish entering, 26-104.5
Jackrabbits, hunting with artificial light, 26-215
Juveniles under thirteen years of age, fishing by, 26-104.3
Landowner's restricted liability to gratuitous licensee for hunting or fishing, 67-808
definition of recreational purposes, 67-809
Lands and waters, acquisition and sale by commission, procedure, 26-104.6
Licenses
bear licenses, issuance to nonresidents, 26-202.5
big game, special licenses, 26-202.2
information to be included in license, 26-212.1
classifications, 26-202.1
exceptions, 26-202.1
falconry licenses, 26-501.1
fees, 26-202.1
disposition and use of fees, 26-121
use for purchase of recreational facilities, 26-234
injuring or wounding person and failing to render assistance, loss of hunting privileges and license, 94-35-269
license agents, compensation, 26-222
littering, forfeiture of license for, 26-812
minors not required to have fishing license, 26-215
nonresident one day fishing license, 26-202.6
outfitters and guides, 26-914 to 26-920—See Outfitters and guides, below
powers of holders of, 26-202.1
predatory hawks and owls, license not required for, 26-501.1
predatory mammals, license not required for, 26-215
"resident" defined for purposes of, 26-202.3
special license for elk, limit upon subsequent licensing, 26-202.2
wildlife conservation license
application, 26-230
expiration, 26-230
false statement, subscription to, 26-232
fees, 26-230
deposit of, 26-233
hunting, fishing or trapping licenses, unlawful sale of, 26-231
hunting, fishing or trapping license tags, affixing to or recording on wildlife conservation license, 26-230
required to obtain hunting, fishing or trapping license, 26-229
Menageries, roadside
definitions, 26-1205

FISH AND GAME (Continued)
Menageries, roadside (Continued)
enforcement provisions, 26-1211
disposition of fines, bonds, penalties and fees, 26-1212
permit to obtain additional animals, 26-1208
permit to operate, 26-1206, 26-1207
permit not a commercial game propagating permit, 26-1209
revocation after inspection, 26-1210
transferring permit, 26-1207
Migratory bird reservations, consent to acquisition by United States, 83-113
Migratory game birds, exclusion from law providing permits for breeding game birds, 26-1201
Moneys received by commission, disposition and use, 26-121
Motorboat regulations—See MOTORBOATS
Motor-driven vehicle, restrictions on use, 26-301
Mountain lion as game animal, 26-201
dogs, use in hunting, 26-303.5
Nurseries and rearing ponds for planting, propagation and rearing of fry, 26-104.5
Outdoor recreational resources development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES
Outfitters and guides
advisory council, election, powers and duties, 26-912
definition of terms, 26-908
enforcement of requirements, 26-921
license required for outfitter or guide, 26-914
application for license, contents, 26-915
examination of licensees, 26-915
fees for licenses, 26-915
deposit of fees, 26-917
kinds of licenses issued, 26-916
qualifications of licensees, 26-915
revocation or suspension of license, grounds, 26-918
appeal to district court, 26-920
procedure, 26-919
nonresident to be accompanied by licensed outfitter or guide, exceptions, 26-909
penalty for violations, 26-922
powers and duties of department, 26-911
rules and regulations, 26-913
waiver of guide requirements for nonresident hunter, 26-909
Possession of illegally taken fish or game, misdemeanor, 26-701
Predatory animals, use of appropriated funds for eradication, 26-104.4
Predatory mammals, taking permitted without license, 26-215
Provisions not applicable to department, 26-301
Raptors, protection and conservation, 26-501.1
Refuges for fish and game, creation and maintenance authorized, 26-104.8
Regulations and orders by commission, 26-301
Removal from state of illegally taken game, misdemeanor, 26-701
Rules governing use of lands, reservoirs and lakes authorized, 26-104.9
Salmonid fish and eggs
importation unlawful unless certified free of infectious organisms, 26-1701
certificate, information necessary on, 26-1703
certification unnecessary if organisms dead, 26-1702
misdemeanor provision, 26-1705
rule-making power of commission, 26-1704
Seasons, bag limits and declaration of open areas, authority of commission concerning, 26-104, 26-104.3
Shooting preserves
amount of game recoverable under license or permit, 26-1605
area covered by preserves, 26-1602
classes of licenses and permits, 26-1612
fees for licenses and permits, 26-1604
game which may be hunted on preserve, 26-1603
inspections of preserves by commission, 26-1614
issuance of licenses or permits authorized for preserves, 26-1601

References are to Title and Section numbers

FISH AND GAME (Continued)
Shooting preserves (Continued)
license required of shooters, 26-1611
limits established by preserve operators, 26-1606
lists of licenses and permits maintained by commission, 26-1612
location of preserves, 26-1602
posting of boundaries required, 26-1602
records required of operators, 26-1609
registration of shooters and game taken, 26-1609
revocation of license or permit, 26-1613
rules and regulations, 26-1601
season when hunting permitted on preserves, 26-1607
size of preserves, 26-1602
species of game to be hunted on preserve, 26-1603
stocking of preserve required of operator, 26-1603
tagging of game taken, 26-1608
wild game, hunting on preserve permitted, 26-1610
Snowmobile, use to drive game prohibited, 53-1020
Special licenses, 26-202.1
Sturgeon as game fish, 26-201
Taxidermist
license, 26-907
records required to be kept, 26-907
Wardens for enforcement of laws
appointment of wardens, 26-107
definition, 26-101.1
duties of wardens, 26-107
ex officio fish and game wardens, 26-114
littering, 32-4410
oath of office, 26-111
protection of private property, 26-110.1
powers, 26-110.2
qualifications, powers and duties, 26-107, 26-110
retirement system
account in agency fund, establishment, 68-1408
contributions paid into account, 68-1405
control and investment of moneys in account, 68-1405
transfer of amounts from public employees' retirement account, 68-1408
actuarial investigations and valuations, 68-1406
beneficiary, designation and changes, 68-1421
board for administration of system, creation and composition, 68-1404
contributions to system
members, contributions by, 68-1409
payment into retirement account, 68-1405
state contributions, 68-1410
death benefits, 68-1418
employment, death attributable to, 68-1417
definition of terms, 68-1401
"state game warden," 68-1402
disability retirement allowance, 68-1414
dormant accounts, transfer to employer's account, 68-1428
effective date for commencement of system, 68-1407
errors, correction, 68-1423
establishment of system, 68-1403
exemption of benefits from taxation or process, 68-1420
false or fraudulent statements, penalty, 68-1423
involuntary retirement allowance, 68-1415
membership in system, 68-1407
military service, credit for, 68-1422
monthly payment of allowances, 68-1419
optional means of payment of benefits, 68-1427
public employees' retirement act inapplicable to game wardens, 68-1429
refund of contributions on resignation or discharge, 68-1416
rules and regulations for administration of system, 68-1406

References are to Title and Section numbers

FISH AND GAME (Continued)
Wardens for enforcement of laws (Continued)
retirement system (Continued)
service retirement, 68-1411
allowance on retirement, 68-1413
subrogation of state to claims against third persons, 68-1425
suspension or revocation of benefits, grounds, 68-1424
voluntary retirement on reduced allowance, 68-1412
workmen's compensation, benefits supplemental to, 68-1426
search, seizure, arrest and enforcement powers, 26-110.3
Waste of game animals prohibited, 26-307
Waterfowl foods, use of funds to introduce, 26-104.4
Wild buffalo protected, 26-301.1
Wild turkey
attaching of tag to turkey taken, 26-511
fee for tag, 26-510
tags for, issuing, 26-510
violation of act concerning, misdemeanor, 26-512

FIXTURES
Ownership of fixtures by landowner, exceptions, 67-1301
Security interests in fixtures, priority between, 87A-9-313

FLOOD CONTROL AND WATER CONSERVATION
County and municipal participation in projects
acceptance of federal, state or other aid, 89-3304
acquisition and condemnation of property, 89-3303
alternative method of organization of projects, amendment or repeal of provisions limited, 89-3314
assessment of property benefited, levy and collection, 89-3309
authority for participation, 89-3301
bond issues by counties or municipalities, 89-3312
charges for services or facilities, authority of counties or municipalities, 89-3309.1
contributions to right of way costs, acceptance, 89-3307
costs, contemplated apportionment, 89-3305
direction of project by state or federal government, 89-3306
division of work into parts, 89-3311
highway property, contracts for use, 89-3310
indebtedness, contracting by counties or municipalities, 89-3312
maintenance of works, counties and municipalities may assume, 89-3307
public purpose of activities declared, 89-3302
railroad property, contracts for use, 89-3310
separate proceedings for parts of work, 89-3311
street or road fund, allocation for costs, 89-3308
supplementary nature of powers, 89-3313
tax assessments for payment of bonds, 89-3312
works with respect to which county or municipality may participate, 89-3301
Floodway management and regulation
artificial obstructions as nuisances, unlawful establishment, 89-3505, 89-3506
penalties for violation, 89-3513
definition of terms, 89-3503
encroachment lines, establishment, 89-3504
establishment of artificial obstructions or nonconforming uses unlawful, penalties, 89-3513
exempt obstructions where drainage area is small, 89-3510
immunity of state, 89-3514
land-use regulations of political subdivisions, 89-3504
legislative findings on flooding of land resources, 89-3501
nonconforming uses as nuisances, prohibited uses, 89-3505, 89-3506
penalties for violation, 89-3513
nuisances, artificial obstructions and nonconforming uses as, 89-3505
open-space uses permitted, 89-3506
orders and rules of board, notice and hearing, judicial remedy, 89-3511
remedies or powers not exclusive, 89-3515

References are to Title and Section numbers

FLOOD CONTROL AND WATER CONSERVATION (Continued)
Floodway management and regulation (Continued)
penalties for violation, 89-3513
permits for obstructions, application, factors considered, fees, 89-3507
effect of permit construed as additional requirement to other laws, 89-3514
program for delineation of floodways, 89-3504
purposes of act, 89-3502
removal of obstructions, powers and duties of board, 89-3508
entry of lands or waters authorized, 89-3509
floodway obstruction removal fund, 89-3512
investigation of natural or artificial obstructions, authority of board, 89-3509
remedies or powers not exclusive, 89-3515
United States regulatory rights, 89-3514
Junked motor vehicles, use in streams unlawful, 94-3552.1, 94-3552.2

FLOUR
Vitamin and mineral contents required, 27-802
definition of terms, 27-801
enforcement procedures, 27-804
modification of requirements, 27-804
penalties for violations, 27-805

FOOD AND DRUGS
Beef or veal, persons exempted from having meat inspected, stamped or being licensed, 46-504
Board of food distributors abolished and functions transferred, 82A-404
Bread, vitamins and minerals required, 27-801 to 27-805—See BREAD
Dairy products, 3-2488 to 3-24-137—See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products
Flour, vitamins and minerals required, 27-801 to 27-805—See FLOUR
Food, Drug and Cosmetic Act, 27-701 to 27-723
adulterated or misbranded articles
additives to conform to regulations permitted, 27-713
condemnation proceedings, destruction of article, 27-706
correction of defect, bond of claimant, 27-706
definitions, 27-710, 27-711, 27-714, 27-715, 27-718, 27-719
detention or embargo of article, 27-706
nuisance, abatement of, 27-706
prohibited acts, penalties, 27-703, 27-705
citation of act, 27-701
cosmetic
adulterated cosmetic defined, 27-718
adulteration or misbranding, see adulterated or misbranded articles above
definition, 27-702
misbranded cosmetic defined, 27-719
definition of terms, 27-702
drug or device
adulterated drug or device defined, 27-714
adulteration or misbranding, see adulterated or misbranded articles above
curative properties, representation of, false advertising, 27-720
"device" defined, 27-702
dispensing of prescription drugs, 27-716
labeling requirements, 27-716
"drug" defined, 27-702
false advertising prohibited, 27-703, 27-705, 27-720
misbranded drug or device defined, 27-715, 27-716
narcotic drugs, law governing, 27-716
new drug, dispensing of
application required, exceptions, 27-717
labeling proposed, 27-717
"new drug" defined, 27-702
tested for safe use, 27-717
simulating mark or label prohibited, 27-703
substituting drugs without consent prohibited, 27-703

References are to Title and Section numbers

FOOD AND DRUGS (Continued)
Food, Drug and Cosmetic Act (Continued)
enforcement vested in state board of health, 27-721
examination of samples by state department of health for violations of act, 27-722
false advertising prohibited, 27-703
criminal penalties, exemptions, 27-705
what deemed false advertising, 27-720
food
adulterated food defined, 27-710
adulteration or misbranding, see adulterated or misbranded articles above
definition, 27-702
misbranded food defined, 27-711
permits for manufacture, processing and packing
conditions governing, 27-712
inspection of premises of permittee, 27-712
suspension and reinstatement, 27-712
standards, regulations establishing, 27-709
unwholesome food, condemnation or destruction, 27-706
hearings under act, conduct of, 27-721
inspection of buildings and premises by state department of health, 27-722
labeling requirement specified by regulation, 27-721
distribution of misbranded products prohibited, 27-703
prohibited acts, enumeration, 27-703
criminal penalties, 27-705
restraining by injunction, 27-704
regulations of state board of health
adoption, amendment, or repeal, procedure, 27-713, 27-721
factors considered, 27-713
hearings, when required, 27-721
effective date, 27-721
food and color additives, use of, 27-713
food standards, 27-709
notice of proposal to promulgate regulations, 27-721
reports of state department of health, 27-723
samples or specimens for analysis, securing by state department of health, 27-722
violations of act, penalties, 27-705
examination of samples to determine violations, 27-722
exemption of advertising media, 27-705
minor violations, prosecution not required, warning notice, 27-708
prosecution instituted without delay, 27-707
reliance on guaranty or undertaking as a defense, 27-705
right of defendant to be heard by department of health, 27-707
summary reports by state department of health, 27-723
Food service establishments
definition of terms, 27-612
diseased person not to handle food or work in establishment, 27-619
enforcement of act by state board, agreements with other agencies, 27-620
fraud, obtaining food with intent to defraud, penalty, evidence of intent, 94-1831
frozen food plants
definition, 27-612
game, beef or veal not properly stamped or tagged, operator to require signed declaration, 27-624
lien for rental on compartments, 27-623
loss of food, liability for, 27-622
owners and operators not responsible for violation of game laws by persons who rent lockers, 27-624
requirements on receipt of game and beef carcasses, 27-624
inspections by health officers and sanitarians, reports to department, 27-621
license from state department of health required, 27-613
application for license, form and contents, 27-614
denial or cancellation of license
appeal from decision of state board, 27-618
grounds, 27-615
hearing, demand for, 27-616
notice in writing, 27-616
proposed plan of correction, effect, 27-617

FOOD AND DRUGS (Continued)
Food service establishments (Continued)
license from state department of health (Continued)
expiration date, 27-613
granted as a matter of right, 27-613
license fee, 27-614
multiple-type establishment, 27-613
partial denial or cancellation, 27-615
nontransferable, 27-613
publicly owned establishments exempt, 27-613
regulation of establishments required to protect public health, 27-611
rules adopted by state board, 27-620
violations, penalties, 27-625
samples of food furnished by licensees for analysis, 27-621
violations of act, penalties, 27-625
corrective plan submitted, approval by department bars prosecution, 27-617
notice, proposed plan of correction, 27-617
Medical practitioners dealing in drugs
definition of terms, 27-901
dispensing of drugs by practitioners, restrictions on, 27-903
drug companies and practitioners, unlawful dealings between, 27-902
enforcement proceedings by county attorneys, 27-905
pharmacies and practitioners, unlawful dealings between, 27-904
existing ownership of pharmacy exempt, 27-906

FORECLOSURE
Attorney fee to be allowed by court, 93-8613
Deficiency judgment, docketing, 93-6001
Parties to foreclosure action, 93-6001
Power of sale contained in mortgage, alternatives available, 93-6004
advertising required for sale under power, 93-6005
attorney fees allowed to mortgagee, 93-6007
redemption rights of mortgagor, 93-6006
Proceeds of sale, application, 93-6001
Sale of property directed by court, 93-6001

FOREIGN LAW
Reasonable written notice of intent to raise issue concerning law of foreign country necessary, M. R. Civ. P., Rule 44.1

FORESTS AND FORESTRY
Bond of person engaged in cutting of forest products as to reduction or management of fire hazard, 28-404
Enjoining violations concerning disposal of slash, 28-407
Experiment station, reports and disposition of income, 28-304
Fire protection
classification of forest land for protection and assessment purposes, 28-109
compliance with protection requirements, what constitutes, 28-110
costs of protection, determination and assessment against land, 28-111
definition of terms, 28-103
enforcement of rules and regulations, 28-125
moneys available for fire protection, 28-123
deposit and payment of moneys, 28-124
plan for fire protection, preparation, 28-111
Reduction or management of fire hazards, 28-404
Sawmills on forest land, license application and fee, 81-1502
Sawmill waste as fire hazard, 28-119
Slash and debris
certificate of clearance, 28-412
contracts for reduction or management of fire hazards, state forester may enter into, 28-410
contracts with forest protective agencies, 28-411
disposal of slash, 28-407
hazard reduction agreement, purchaser of forest products to insure compliance, 28-406

FORESTS AND FORESTRY (Continued)
Slash and debris (Continued)
injunctions where slash and debris not disposed of properly, 28-407
methods of reducing hazards, 28-411
modern forest practices to be used, 28-408
reduction, 28-405
reduction or management of fire hazard, 28-404
slash and debris along right-of-way, 28-405
state forester, supervision, 28-408
state forest fire wardens, delegation of powers to, 28-409
violation of provisions, penalty, 28-405
State board of forestry, powers, 28-105
abolition of board and transfer of functions, 82A-1505
State forester, appointment, compensation and term of office, 81-1403
abolition of position and transfer of functions, 82A-1505
report to governor, 81-1411
State forests
conservation appropriations and allotments, receipt by state treasurer, 81-1410
sale of timber, supervision and scaling by state forester, 81-1408
State lands in general, sale of timber from, 81-1601
Transportation of coniferous trees, bill of sale required, 28-701

FORFEITURES
Bail, forfeiture, procedure, disposition of judgment and execution, 95-1116, 95-1117
Disposition of fines and forfeitures, 95-2228
juvenile traffic offenders, fines collected from, 95-2229
Vehicles used in transporting stolen livestock, 94-35-204, redes. 46-3005

FORGERY
Identification cards, false procurement, penalty, 94-2014

FRATERNAL BENEFIT SOCIETIES
See INSURANCE, Fraternal benefit societies, 40-5301 to 40-5359

FRAUD
Accommodations, obtaining with intent to defraud, penalty, evidence of intent, 94-1831
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)
circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
Obtaining money, property or service by false pretenses, 94-1805
Statute of frauds, 13-606—See STATUTE OF FRAUDS
Uniform Commercial Code supplemented by general provisions of law, 87A-1-103

FUNERAL DIRECTORS
Licensing requirements, 66-2701 to 66-2717—See MORTICIANS AND FUNERAL DIRECTORS

FUNGICIDES
See PESTICIDES, 27-213 to 27-245

FUR-BEARING ANIMALS
Production defined as agricultural pursuit, 3-110.1

FURNISHING BOARD
Board abolished, 82-3322

G

GALEN STATE HOSPITAL
See also STATE INSTITUTIONS
Cost of support, payment by resident or responsible person, 80-1601 to 80-1604
Industrial activities permitted, 80-1501 to 80-1503
Juvenile reception and evaluation center, committal, duties, transportation provided, 80-1704

GALEN STATE HOSPITAL (Continued)
Location of hospital, 80-1701
Management and control of hospital by department of institutions, 80-1401 et seq.
Purposes of hospital, 80-1701
Superintendent, qualifications, 80-1702
Transfer of patients from other institutions
Boulder river school and hospital, 80-2308
center for the aged, 80-2502
Transfer of patients to mental institutions, 80-1703
Tuberculosis treatment facilities to be maintained by hospital, 69-4317
charges for care and treatment of patients, 69-4316

GAMBLING
Parimutuel betting permitted at licensed horse races, 62-511
percentage of pool retained by licensee, 62-512
tax on bets, withholding by licensee, 62-513
Prohibition against gambling unless authorized by legislature or by people, 1972 Const., III, 9

GAME WARDENS
See FISH AND GAME, Wardens for enforcement of laws

GARBAGE
Disposal areas regulated, 69-4001 to 69-4010—See REFUSE DISPOSAL AREAS
Disposal districts, 69-6001 to 69-6011—See REFUSE DISPOSAL DISTRICTS
Hunting or fishing license forfeited for littering, 26-812
Litter control law, 94-3335 to 94-3344—See LITTER CONTROL LAW

GARNISHMENT
Availability of remedy before and during action, M. R. Civ. P., Rule 64
Compensation under occupational disease act exempt from, 92-1329
Teachers' retirement system benefits exempt from garnishment, 75-6215

GAS COMPANIES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

GEOPHYSICAL EXPLORATION
Restoration of surface to original condition required, 69-3304

GIFTS
Unsolicited goods deemed a gift, 67-1706.1

GONORRHEA
See VENEREAL DISEASE, 69-4601 to 69-4617

GOVERNOR
Absence from state, lieutenant governor as acting governor, 1972 Const., VI, 14
Adjutant general, appointment, 77-117
Board of land commissioners, member of, 1972 Const., X, 4
Board of public education and board of regents
appointment of members, 1972 Const., X, 9; 75-5610
ex officio nonvoting member, 1972 Const., X, 9; 75-5610
state board of education, president of board, 75-5615 (2)
Budget, submission to legislature, 1972 Const., VI, 9
Candidacy for public office during term authorized, 1972 Const., VI, 5
Chief budget officer, governor constitutes, 79-1012
Citizenship, power to restore, 1972 Const., VI, 12
Commander-in-chief of militia, 1972 Const., VI, 13
Continuity of government in emergency, 1889 Const., V, 46; 1972 Const., III, 2
post-attack resource management, powers and duties, 77-1504 to 77-1506
succession to governorship, 82-1309, 82-3802

GOVERNOR (Continued)
Death of governor, succession of lieutenant governor, 1972 Const., VI, 14
Delegation of constitutional powers to lieutenant governor prohibited, 1972 Const., VI, 4
Departments of state government, supervision, appointment of department heads, 1972 Const., VI, 8
Director of budget, appointment, 79-1012
Disqualification, succession of lieutenant governor, 1972 Const., VI, 8
Election, joint filing with candidate for lieutenant governor, 1972 Const., VI, 2
Emergency and disaster expenditures authorized by governor, 79-2501
  implementation and administration of program, 79-2503
  maximum expenditure in biennium, 79-2502
Executive branch, office in, 1972 Const., VI, 1
Executive power vested in office, 1972 Const., VI, 4
Fines and forfeitures, power to suspend or remit, 1972 Const., VI, 12
Governor-elect, orderly transition of power to, 82-1311 to 82-1314
Impeachment, subject to, 1972 Const., V, 13
Inability to serve, procedure, lieutenant governor as acting governor, 1972 Const., VI, 14
Industrial accident board member, appointment, 92-104
Interstate compact on juveniles, appointment of administrator, 10-1002
Messages to legislature, 1972 Const., VI, 9
Method of selecting in event of enemy attack and person in line for succession unable to act, 82-1309
Military affairs
  call of militia forces, authority of governor, 1972 Const., VI, 13
  commander-in-chief of militia forces, 1972 Const., VI, 13
  importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33
Oath of office, 1972 Const., III, 3
Other government employment prohibited during term, 1972 Const., VI, 5
Qualifications, 1972 Const., VI, 3
Reports to governor, 1972 Const., VI, 15; 82-4002—See REPORTS
Reprieves, commutations and pardons, power to grant, 1972 Const., VI, 12
Review of executive branch, report to legislature, 82-1315
Salary, 1972 Const., VI, 5; 25-501
Senate confirmation of appointments, 1972 Const., VI, 8
Special sessions of legislature, authority to convene, 1972 Const., V, 6, VI, 11
State board of forestry, members, appointment, 28-101
Succession to office on death, disqualification or absence of governor, 1972 Const., VI, 6, 14
Term of office, 1972 Const., VI, 1
Vacancies in executive or administrative offices, governor's appointing power, 1972 Const., VI, 6, 8
Vacancy in office of governor, succession, 1972 Const., VI, 6, 14
  acting governor upon incapacity of governor and lieutenant governor, 82-1304.4
    rights, duties and emoluments, 82-1304.5
  lieutenant governor's office vacant, 82-1304.1 to 82-1304.3
Veto power, 1972 Const., VI, 10
Water resources board, ex officio member of, 89-103
Wheat research and marketing committee, appointment, 3-2905
  removal of members, 3-2907

GRAND JURY
Challenge of panel or juror, 95-1403
Charge by court, 95-1404
Composition and drawing of jury, 1972 Const., II, 20; 95-1401
Discharge upon completion of business, 95-1404
Disclosure of proceedings, restrictions and requirements, 95-1409
Dismissal of indictment, motion on grounds jury not selected, drawn or summoned according to law, 95-1402
Evidence before grand jury, requirements, 95-1408
Foreman, appointment, powers and duties, 95-1403

GRAND JURY (Continued)
Impaneling of jury, number of names to be drawn, 93-1801
selection of jury from persons summoned, 93-1802
Indictment
amending charge, 95-1505
endorsement as "a true bill," 95-1410
evidence required to find, 95-1408
finding and presentment, 95-1410
form of charge, 95-1503
joinder of offenses and of defendants, 95-1504
number required to find indictment, 1972 Const., II, 20; 95-1401, 95-1410
prior conviction, charge of, notice and procedure, 95-1506
Number of regular jurors, alternate jurors, 1972 Const., II, 20; 95-1401
Objections to panel or juror, 95-1402
Powers and duties of jury, 95-1405
Proceedings before jury, who may give advice, who may be present, transcript of testimony, 95-1406
Secrecy of proceedings, 95-1409
Subpoena of witnesses, issuance, 95-1407
Summoning grand jury, discretion of district judge, 1972 Const., II, 20; 95-1401

GRASS CONSERVATION
Commission
abolition of commission and transfer of functions, 82A-1502
biennial report to governor, 46-2306
expenses and compensation of members, 46-2306
Fees imposed against districts, disposition, 46-2331

GRAZING DISTRICTS
Appeal procedure, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

GRENADES
Possession in public place with felonious intent as felony, penalty, 69-1932
definition, 69-1931

GROUND WATER
See WATERS AND WATER RIGHTS, Ground water regulation, 89-2911 to 89-2936

GUARDIANSHIPS
Action brought without joining ward as party, M. R. Civ. P., Rule 17(a)
Appointment of guardian ad litem, M. R. Civ. P., Rule 17(c)
Guardian for receiving public welfare aid to dependent children payments, 71-509
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Service of process on guardians, M. R. Civ. P., Rule 4D(2)
Validation of sales of property, 91-4324 et seq.

H

HABEAS CORPUS
Appeal to supreme court from order discharging petitioner, 95-2714
Application by petition, contents, verification, 95-2703
Bail, habeas corpus to obtain admission to, 95-2702
Constitutional guarantee of writ, 1972 Const., II, 19
Contempt of court for refusal to obey, 95-2706
Contents of writ, 95-2707
Discharge of person detained, 95-2713
Eligibility for writ, 95-2701
Grounds for issuance, no release for technical defects, 95-2716

HABEAS CORPUS (Continued)
Hearing
evidence, depositions authorized, 95-2712
summary hearing authorized, 95-2711
Issuance of writ, by whom issued, 95-2704
granting without delay required, 95-2705
writ and process issued and served at any time, 95-2715
Obedience to writ, refusal, contempt of court, 95-2706
Petition for writ, contents, verification, 95-2703
Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing
Production of person detained required, exception, 95-2710
Return of person on whom writ served
contents, 95-2709
courts, justices or judges before whom returnable, 95-2704
hearing on return, 95-2711
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Service of writ, 95-2708
writ and process issued and served at any time, 95-2715
Supreme court jurisdiction, 1972 Const., VII, 2
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

HAIL INSURANCE, STATE
Account in agency fund created, 82-1511
Agents of department of revenue, duties, 82-1512
Board transferred to department of agriculture for administrative purposes, 82A-304.1
Borrowing power of state board, 82-1517
Claims for losses, appraisal, arbitration and appeal, 82-1516
Compensation of board members and employees, 82-1519
Counties, payments to, 82-1511
Form describing benefits, distribution to farmer taxpayers, 82-1501
General fund, transfer of funds to, 82-1511
Payment of losses, 82-1517
Reinsurance authorized, 82-1505
Report to governor, 82-1519
Reserve, deposit and use, 82-1507
Tax levy
delinquent taxes, deduction from payment for losses, 82-1517
expenses to be covered by levy, 82-1507
refund of taxes in excess of needs, 82-1507
Warrants for money borrowed, 82-1517

HEALTH, LOCAL BOARDS OF
Appropriations to support boards, 69-4508
City board, composition, 69-4505
City-county board, agreement and composition, 69-4506
County board, composition, 69-4504
Definition of terms, 69-4501
District board, agreement and composition, 69-4507
Federal funds, allocation to local boards, 69-4503
Financing of local boards, 69-4508
Powers and duties of boards generally, 69-4509
Supervision by state board of health, 69-4502
Tax levy for support of board, 69-4508
Violation of rules or order, penalty, 69-4519
Visiting nurse services provided by board, 69-4512

HEALTH OFFICERS
Appointment by local board, 69-4509
state board to appoint after failure by local governing board, 69-4511
Communicable diseases to be reported to health officer, 69-4514
diseased prisoners, removal from jail, 69-4516
Law enforcement officers to assist in enforcement, 69-4513

HEALTH OFFICERS (Continued)
Obstructing performance of duties unlawful, 69-4517
penalty, 69-4519
Powers and duties in general, 69-4510
Violation of orders, penalty, 69-4519

HEALTH SERVICE CORPORATIONS
Disability insurance plans to cover newborn infants from moment of birth, 15-2304.1
Organization under Nonprofit Corporation Act, 15-2304
State employee group insurance plans, 40-3905.1

HEALTH, STATE BOARD OF
See DEPARTMENT OF HEALTH, Board of health

HEARING AID DISPENSERS
Board of hearing aid dispensers renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment and terms of members, 66-3004
continuation in office of board members, 82A-1606
creation of board, 66-3002
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
meetings of board, 66-3006
powers and duties of board, 66-3005, 82A-1605
retention of funtions by board, 82A-1605
Exclusions, 66-3009
Judicial review of board proceedings, 66-3023
Licenses, 66-3007, 66-3013, 66-3014
disciplinary proceedings, 66-3017, 66-3022
examinations, 66-3011, 66-3012
fee and requirements, 66-3010
practicing without license a misdemeanor, 66-3021

HIGHWAY PATROL
Appeals from supervisor, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Board abolished and functions transferred, 82A-1205
Chief of patrol, appointment, 31-104
Fees, fines and forfeitures, disposition, 31-114
Identification cards, issuance to persons not holding drivers' licenses authorized, 31-170
agents for issuance of cards, 31-173
fees, amount and disposition, 31-174
immunity of public entity from liability for inaccurate information, 31-172
rules and regulations for issuance of cards, 31-171
Reserve patrolmen, filling vacancies, 31-105
Retirement system
actuarial investigations and data, 31-206
administration of act, 31-206
board abolished and functions transferred, 82A-202
quasi-judicial functions, 82A-211
definition of terms, 31-201
payments into retirement account, 31-205
members, contributions by, 31-209
state contributions from driver's license fees, 31-210
rules and regulations, 31-206
surplus moneys in account, investment, 31-205
Rules and regulations prescribed by board, 31-103
Salaries paid from highway department earmarked fund, 31-105.1
Submission of new-voter list to major political parties, 23-3001
Transfer of functions to division of motor vehicles, 82A-1206
Vehicle equipment safety compact, duties under, 32-21-166 to 32-21-175—See MOTOR VEHICLES, Equipment safety compact ratified

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES

Abandoned vehicles, removal and sale, 53-901 to 53-909—See MOTOR VEHICLES, Abandoned vehicles
Beautification of highways
expenditure of funds
nonmatching funds, limitation to, 32-2425
purposes for which federal funds expended, 32-2423
land acquired, extent of interest and methods of acquisition, 32-2424
purposes of act, 32-2422
Board of highway appeals created, 82A-704
transfer of functions to board, 82A-705
Checking stations along highways authorized, 32-2419
co-operation by highway commission with other agencies required, 32-2421
major highways entering state, checking stations required, 32-2420
Classes of highways enumerated and defined, 32-2301
Controlled access facilities
commercial enterprises prohibited on public land, 32-4310
definition of terms, 32-4302
traffic regulatory act, 32-2119
designation of highway by state highway commission, 32-4303
local authorities empowered to make designations, 32-4305
design of facilities, powers of highway authorities, 32-4306
driving violations on facility, penalty, 32-4311
grade crossing elimination, powers of highway authorities, 32-4307
intersections with facilities, power of authorities to permit, 32-4307
interstate sign manual, adoption for use on controlled access highways, 32-2133
plan for proposed highway, filing with county clerk, 32-2413
policy of state, 32-4301
resolution designating highway, findings and statements to be included, 32-4303
local authorities empowered to pass resolutions, 32-4305
secondary highways, consent of governing body required for control, 32-4305
right of way acquisition for highway, 32-3920
county acquiring property, 32-4018
service roads, design, construction and regulation, 32-4308
signs required to show points of ingress and egress, 32-4309
traffic regulation, powers of local authorities, 32-4305
violation of traffic regulations, penalties, 32-4311
County bonds
amortization bonds preferred, provisions for repayment, 32-3806
emergency repairs after disaster, limitation on amount of bond issues, 32-3804
inability of county to pay total indebtedness, refunding agreements, 32-3802
maximum amount of indebtedness outstanding, 32-3801
additional limitation except for emergency and refunding purposes, 32-3804
purposes for which bonds may be issued, 32-3801
single purpose defined, 32-3803
redemption of bonds before maturity, provision for, 32-3805
refunding bonds authorized, 32-3801
inability of county to pay total indebtedness, 32-3802
maximum term of refunding bonds, 32-3805
serial bonds permitted, provisions for repayment, 32-3806
term of bonds limited, 32-3805
County bridges
bond issues for construction of bridges, 32-2903
contracts for work on bridges to be let by board, procedure and requirements, 32-4204
minimum amount to be done by contract, 32-2802
election to authorize bridge construction, 32-2903
intercounty bridges, construction and maintenance, 32-2906
maintenance as responsibility of county commissioners, 32-2901
management and control of bridges by commissioners, 32-2905
municipalities, responsibility for construction and maintenance within, 32-2902
police regulation of bridges, 32-2905
repair of bridges, duty of commissioners, 32-2904
state highway personnel assisting county commissioners, 32-2502

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
County bridges (Continued)
stream beds and banks, repair to protect bridge, 32-2905
street or suburban railway sharing bridge, sharing of costs, 32-3603
tax levy on property in county for bridge construction and maintenance, 32-3602
additional levy on approval by voters in election, 32-3605
municipality, special levy for bridge in, 32-3604
County motor vehicle fund, license and registration fees paid into, 32-3701, 53-122
city road fund in population centers, segregation, 32-3702
use of city road fund, 32-3703
city road fund other than in population centers, segregation, 32-3704
use of city road fund, 32-3705
transfer of remaining funds to county road fund, 32-3702, 32-3704
use of county road fund, 32-3706
County roads
accounts of labor, equipment and materials furnished, 32-3003
appropriations for expenditures within district, 32-2812
auto passes on county roads, construction and maintenance, 32-2811
state or federal highway, pass at connection with, 32-2810
bonds, power of commissioners to issue, 32-2802
cattle guards, appurtenances and gates adjacent to county roads, 32-2802
certification of labor, equipment and materials furnished, 32-3003
continuation in effect until properly abandoned or vacated, 32-4014
contracts for work on roads to be let by board, 32-4201
acceptance of work required for completion of contract, 32-4203
advertising for bids, 32-4201
bond required of bidders, 32-4202
bond required of contractor, 32-4203
minimum amount to be done by contract, 32-2802
preference given to resident bidders, 32-4202
wage scale required of contractor, 32-4202
definition, 32-2301
districts, division of county into, 32-2801
drains and ditches, construction and protection, 32-3007
employment of laborers by superintendent, 32-3006
expenditures in road districts limited by quarterly apportionments, 32-2812
guideposts, erection, 32-2801
improvement district proceedings, 32-3101 to 32-3131—See Local improvement districts, below
information to be furnished to highway commission, 32-2815
inspections and reports on county road work, 32-2805
machinery for road work, purchase by county, 32-2806
use of machinery within municipality, 32-2807
material for road building, acquisition, use and disposal, 32-2806
obstructions, duty of commissioners to remove, 32-2904
opening, discontinuing or changing road
canal or ditch crossing, duty of owner to prepare, 32-4013
damages determined by board, 32-4006
payment of damages from county fund, 32-4008
eminent domain on failure to reach agreement as to damages, 32-4007
investigation by board of desirability of action, 32-4004
joint action required on county line roads, 32-4002
notice by board of decision on proposed action, 32-4004
notice to road supervisor of action, 32-4010
petition required for action, 32-4001
contents of petition, 32-4003
number of signatures required on petition, 32-4002
railroad crossing, duty of railroad owner to prepare, 32-4013
recording of findings, plat, and surveyor's report, 32-4011
section or subdivision lines, petition to change road to, 32-4009
survey and platting of road to be opened, 32-4005
payment of claims on superintendent's certificate, 32-3004
plat books prepared by surveyor, 32-2803

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
County roads (Continued)
powers of county commissioners in general, 32-2801, 32-2802
reports by county commissioners to highway commission, 32-2801
right of way, power of county commissioners to acquire, 32-2802
secondary road information to be given county commissioners by highway commission, 32-2608
seeding of right of way areas along county roads, 32-2813
special fuel dealers and users licenes tax, disposition of funds, 84-1840
state land equalization payments, allotment from, 81-1120
state personnel assigned to assist commissioners, 32-2502
stock lanes, establishment and maintenance, 32-4015
subdivision and section lines, roads to follow when practicable, 32-2809
superintendent of roads, appointment by board of commissioners, 32-2803
bond filed by superintendent, 32-3001
compensation of superintendent, 32-3001
duties of superintendent in general, 32-3002
oath of office, 32-3001
requisition and use of equipment, tools and implements, 32-3005
supervisor, employment by board of commissioners, 32-2803
tax levy on property in county for road construction and maintenance, 32-3601
additional levy on approval by voters at election, 32-3605
traffic limitations, power of commissioners to impose, 32-2802
transfer of county roads to state highway commission, 32-4016
weed control along county roads, 32-2814
width of roads prescribed, 32-2808
Debris, dumping on highway, 32-4410
Definition of terms, 32-2203
Director of highways, appointment, 82A-707
head of department of highways, 82A-701
Emergency construction area
designation by county commissioners, 32-317
livestock not to run at large in area, 32-319
impounding of animals at large, 32-320
penalty for violations, 32-321
notice of designation of area, 32-318
removal of designation, 32-318
Encroachments on highway
abatement as nuisance by judicial action, 32-4408
notice to remove encroachment, manner of giving, 32-4406
penalty for failure to remove after notice, 32-4407
prosecution of actions by county attorney, 32-4409
removal at expense of owner after notice, 32-4408
removal by road supervisor or county surveyor without notice, 32-4405
Excavations across highways, permit and bridging required, 32-4403
Federal aid highways
assent to provisions of Federal acts, 32-2401
canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918
continuation of highways until properly abandoned or vacated, 32-3917
contracts for implementation of Federal aid authorized, 32-2401
contracts for work on highways to be let by highway commission, 32-4101
bond required of contractors, 32-4103
competitive bidding required, 32-4102
counties to do work, agreements for, 32-4102
wage scale required of contractors, 32-4101
county contracts for work on federal-aid system, 32-4102
county road, transfer to Federal-aid system, 32-4016
designation of highways included in Federal-aid systems, 32-2407
highways not continuously in state, designation as part of Federal-aid system, 32-2408
railroad crossing by highway, preparation of crossing, 32-3918
rules necessary for compliance with Federal acts authorized, 32-2401
seeding along highways, 32-2412

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Federal aid highways (Continued)
utility facilities along Federal-aid and interstate highways, location, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Ferries, county acquisition of property for, 32-4017
tax levy for construction, maintenance and repair, 32-1518
Ferries uniting two counties, construction, maintenance and operation, 32-2907
Flood control projects, contracts for use of highway property for, 89-3310
Forest development roads, enforcement of traffic laws on, 32-2124.4
definition of terms, 32-2124.3
special service roads excepted, 32-2124.5
Funds available, allocation by highway commission
bond account, use of license proceeds for, 32-2601
bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
districts to which funds apportioned, 32-2603
highway patrol salaries paid from earmarked revenues, 31-105.1
increase in funds allocated to particular district, 32-2610
interstate highway system, allocation of funds for, 32-2609
matching of federal funds, allocations for, 32-2605
interim apportionment by department, 32-2612
primary federal-aid system, allocation of funds for, 32-2606
secondary federal-aid system, allocation of funds for, 32-2607
urban federal-aid funds, allocation, 32-2611
Garbage, dumping on highway, 32-4410
Gasoline taxes, highway revenue nondiversion, 1972 Const., VIII, 6
use of gasoline tax proceeds for highway purposes, 32-2601
Good Roads Day, annual observance, 32-4401
Herding on public highways, flagmen escorts and nighttime prohibitions, violations, 32-1021, 32-1022
Injuries to highways, signs and trees, punishment, 32-4402
Interstate highways, weight of vehicles on highways, controlled by federal law, 32-1123
Junkyards along roads
agreements with the United States, 32-4522
definition of terms, 32-4514
injunction against noncomplying junkyard, 32-4521
license required for operation, 32-4515
duration of license, 32-4516
fee for license, 32-4516
issuance of license, 32-4516
renewal of license, 32-4516
screening required for license, 32-4517
location of junkyards, restrictions, 32-4517
purpose of act, 32-4513
removal of junkyards, 32-4520
restrictive ordinances and regulations not abrogated by statute, 32-4523
screening of junkyards, specifications, 32-4517
acquiring land for screening purposes, 32-4520
existing junkyards, 32-4518
regulations governing screening, 32-4519
Legislative findings, 32-2201
Legislative policy and intent, 32-2202
Lewis and Clark highway designated, 32-2302
Litter control law, 94-3335 to 94-3344—See LITTER CONTROL LAW
refuse, dumping on highway, 32-4410
Livestock gates on county roads, 32-2811
state or Federal highway, gate at intersection with, 32-2810
Local improvement districts
assessment of benefits
apportionment of cost among parts of district, 32-3111
apportionment of costs and expenses to land, 32-3115
approval and certification of assessment roll by board, 32-3117
board to levy and collect assessment, 32-3101

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Local improvement districts (Continued)
assessment of benefits (Continued)
confirmation of assessment roll, 32-3116
correction of errors in assessment roll, 32-3117
front-foot plan for levy of assessments, 32-3112
lien of assessment on land, 32-3101, 32-3111, 32-3117
notice of filing of assessment roll, publication, 32-3116
objections to assessment roll, hearing by board, 32-3116
parts into which district divided for assessment, 32-3110
roll of assessment, contents and filing, 32-3115
units for levy of assessment, 32-3112
valuation of lands according to tax assessment roll, 32-3106
audit of claims and accounts of district, 32-3129
board of county commissioners, powers and duties in general, 32-3101
bond issues
amount of bonds not to exceed costs and expenses, 32-3123
board of county commissioners to issue bonds, 32-3101
call of bonds before maturity, 32-3127
contractor, issuance of bonds to in payment for improvement, 32-3126
progress payments during construction, 32-3130
form of bonds, 32-3123
immediate payment of assessment to release lands from bonds, 32-3125
interest payments by treasurer, 32-3127
interest rate on bonds, 32-3118, 32-3123
maturity date of bonds, 32-3123
notice of assessment roll and proposed issue of bonds, 32-3124
redemption of land from bonds by immediate payment of assessment, 32-3125
remedies of bondholders on default, 32-3128
sale of bonds to pay costs and expenses, 32-3126
boundaries of district and parts of district, 32-3110
claims and accounts, approval, certification and payment, 32-3129
committee of supervisors, election and qualification, 32-3105
compensation of supervisors, 32-3113
duties of committee, 32-3106
construction or improvement of road
county performing construction or improvement work, 32-3114
inspector, appointment, duties and compensation, 32-3113
progress payments to contractor, 32-3130
contracts for work of improvement
acceptance of work required for completion of contract, 32-4206
advertising for bids, 32-4205
bond required of bidders, 32-4205
bond required of contractor, 32-4206
county not liable on contract, 32-4207
execution of contract by board of county commissioners, 32-4207
opening of bids, 32-4205
preference given to resident bidders, 32-4206
price of contract not to exceed cost estimates, 32-4205
progress payments authorized, 32-4206
wage scale required of contractors, 32-4206
costs of construction or improvement
county share of cost, maximum and order of payment, 32-3109
agreement with district to share costs, 32-3108
damage or injury to property, release obtained by committee and surveyor, 32-3106
estimates of cost prepared by superintendent of roads, 32-3106
reports of estimates to board, 32-3107
maximum costs allowed, 32-3107
damage or injury to property, releases obtained by committee and surveyor, 32-3106
maximum damages, costs and expenses, 32-3107
meeting of road superintendent and landowners
conduct of meeting, 32-3105
election of committee of supervisors, 32-3105

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Local improvement districts (Continued)
meeting of road superintendent and landowners (Continued)
notice of time and place of meeting, publication, 32-3104
resolution fixing time and place of meeting, 32-3104
municipalities, roads within not to be included, 32-3103
order creating improvement district, 32-3107
payment of cost and expenses
alternative plans available, 32-3118
immediate payment plan, notice of assessment roll to landowners, 32-3119
contents of notice, 32-3120
installment payment plan
bonds authorized for installment payments, 32-3122
collection of installments by treasurer, 32-3121
immediate payment of assessment to release land from bonds, 32-3125
notice of assessment and proposal to issue bonds, 32-3124
order of board levying assessment, 32-3121
redemption of land from bonds by immediate payment of assessment, 32-3125
sale of land for collection of delinquent installments, 32-3121
remaining funds after payment, refund, rebate or other disposition, 32-3131
petition for construction or improvement of road, contents and filing, 32-3102
plans and specifications prepared by road superintendent, 32-3106
refunds and rebates of assessments, 32-3131
remaining money after payment of costs and expenses, disposition, 32-3131
report of surveys and estimates by road superintendent, 32-3107
resolution of public interest to be passed by board on receipt of petition, 32-3103
survey and examination of road and lands by committee and surveyor, 32-3106
National park approach roads, agreements with federal agencies for, 32-2601
Outdoor advertising regulation, 32-4715 to 32-4728
commercial or industrial areas, agreement with federal authorities for advertising in, 32-4724
definition of terms, 32-4716
highways affected by law, 32-4715
legislative findings and policy, 32-4715
nonconforming signs, displays and devices prohibited, 32-4717, 32-4722
appeal from decision of commission to district court, taxing of costs, 32-4722
findings, conclusions and decision of commission, copies to be mailed to parties, 32-4722
hearing on notice of intention to remove, when required of commission, 32-4722
immunity of commission from liability, exception, 32-4722
notice of intention to remove required of highway commission, 32-4722
public nuisances, nonconforming advertising declared to be, 32-4728
removal of structure by commission, liability for costs incurred, 32-4722
transcript of record at hearing to be kept by commission, 32-4722
ordinances, regulations or resolutions more restrictive not abrogated by law, 32-4725
regulations of commission in conformity with federal law authorized, 32-4718
amendment to conform to change in federal law, when authorized, 32-4726
signs, displays and devices in proximity to highway, permit and conformity with standards required, 32-4717 to 32-4720
application for permit, contents, duration, identification tag, fee, 32-4720
standards for permitted advertising, 32-4719
violations, notice, remedial action by commission, 32-4721
structures lawfully existing prior to effective date of law, 32-4720, 32-4723
acquisition by commission, 32-4723
permit and identification tag to be issued by commission, fee, 32-4720
removal for improper maintenance authorized, 32-4720, 32-4721
removal without just compensation prohibited, exceptions, 32-4723
title of law, 32-4715
violations as misdemeanor, 32-4727
Overflow of highway, liability for damages and repairs, 32-4404
Policy of state, 32-2202

HIGHWAYS, BRIDGES AND FERRIES (Continued)

Ports of entry, establishment on highways authorized, 32-2419
co-operation by highway commission with other agencies, 32-2421
major highways entering state, checking stations required, 32-2420
Preference of Montana labor in awarding contracts, 41-701
penalties for violations, 41-703
Refuse, dumping on highway, 32-4410
Right of way acquisition for county roads
controlled access facility, acquisition for, 32-4018
conveyance of right of way, execution and recording, 32-4012
damages determined by board, 32-4006
payment of damages out of county fund, 32-4008
eminent domain proceedings after failure to agree on damages, 32-4007
recording of copy of judgment, 32-4012
estates which may be acquired by public, 32-3901
ferry, acquisition of property for, 32-4017
interest acquired by public, 32-4001
investigation by board of desirability of acquisition, 32-4004
joint action required on county line roads, 32-4002
notice by board of decision on proposed acquisition, 32-4004
opening and survey of road, 32-4005
petition of landowners required for acquisition, 32-4001
contents of petition, 32-4003
number of signatures required on petition, 32-4002
power of board of commissioners, 32-2802
Right of way acquisition for state highways
controlled access facilities, 32-3920
plan filed with county clerk, 32-2413
improvements after filing not compensable, 32-3908
eminent domain power, procedure for exercise, 32-3904
entire parcel acquired where portion not needed will have little market value, 32-3905
estates which may be acquired by public, 32-3901
future highway purposes, power to acquire for, 32-3906
irrigable lands rendered unusable, compensation paid, 32-3916
lease of unused property, disposition of rentals, 32-3906
materials needed for road building, right of commission to remove and use, 32-3907
plan filed with county clerk, 32-2413
improvements after filing not compensable, 32-3908
plat to be filed where part of parcel acquired, 32-3905
power of highway commission in general, 32-3902
purposes for which property may be acquired, 32-3903
relocation assistance, 32-3921 to 32-3931
advisory assistance, 32-3924
business losses from relocation, 32-3925
closing costs on new purchase, 32-3926
definitions, 32-3923
element of damages, 32-3931
highway commission's rule-making power, 32-3922
increased cost for replacement dwelling, 32-3926
moving expenses, 32-3921
payments not income for state tax purposes, 32-3930
payments to landowners, 32-3925 to 32-3927
review of application for assistance, 32-3928
rules and regulations, 32-3922, 32-3929
resolution required for exercise of eminent domain power, 32-3904
surplus property disposition
demand by former owner that land be offered for sale, 32-3909
determination by commission that property is not needed, 32-3909
exchange for property needed, 32-3909
sale of property, power of commission, 32-3910
appraisal of property required before sale, 32-3911
conveyance of property to purchaser, 32-3915
minimum price of sale, 32-3911

References are to Title and Section numbers

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Right of way acquisition for state highways (Continued)
surplus property disposition (Continued)
sale of property (Continued)
notice of sale, publication, 32-3911
preferential right of previous owner to repurchase, 32-3912
private sale after unsuccessful public offering, 32-3913
public sale, when required, 32-3910
title not to pass until purchase price paid, 32-3911, 32-3913
toll bridge, acquisition for, 32-3919
Roadblocks, arrest at, 95-618
Secondary road information to be provided to county commissioners, 32-2608
Seeding along state and federal highways, 32-2412
Signs along highways, injury to or removal prohibited, penalty, 32-2134.1
posting of notices of act along highways, 32-2134.3
reward for informing on violators, 32-2134.2
Special fuel dealers and users license tax, disposition of funds, 84-1840
State highway commission
accounts maintained by commission, 32-2417
advice to county officers, 32-2410
appointment of members, 32-2402
bonds given by commission members, 32-2404
chairman of commission, selection and voting power, 32-2405
claims against commission, certification and payment, 32-2417
continuation as quasi-judicial board, 82A-706
co-operation with local agencies, 32-2406
county commissioners, state personnel assigned to assist, 32-2502
districts from which members appointed, 32-2403
division of maintenance and control, organization and operation, 32-2503
employment, compensation and assignment of personnel, 32-2502
Federal aid, acts necessary to secure authorized, 32-2401
fencing along highways through open range, 32-2426, 32-2427
funds credited to account of highway commission, 32-3205
investigation of construction methods, 32-2410
meetings of commission, 32-2405
number of votes required for action, 32-2405
office to be open as required, 32-2409
peace officers, appointment by commission, 32-1632
arrest by officer, procedure on, 32-1641
co-operation with other agencies, 32-1640
highways on which authority exercised, 32-1638
identification badge to be displayed, 32-1637
inspection powers of officers, 32-1636
justice of peace fees, 32-1641
offenses for which arrests authorized, 32-1639
rules and regulations, 32-1633
training to be provided, 32-1633
completion of training required before arrests authorized, 32-1634
uniform to be worn, 32-1635
per diem payments to members, 32-2404
political affiliations of members, 32-2403
powers of commission in general, 32-2406
qualifications of members, 32-2403
quorum of commission, 32-2405
records of commission, 32-2409
records, sale to public of records and publications, 32-3914
removal of members from office, grounds, 32-2403
reports to governor and legislative assembly, 32-2409
report to budget director, 79-1013
residence of members, 32-2403
rules and regulations for government of commission, 32-2409
sale of personal property, disposition of proceeds, 32-3914, 82-1914
sign manual for use on highways, adoption, 32-2133
state highway administrator, appointment, salary, duties and removal, 32-2501

HIGHWAYS, BRIDGES AND FERRIES (Continued)

State highway commission (Continued)
state officers and employees not to be appointed to commission, 32-2403
statistical compilations by commission, 32-2410
terms of office of members, 32-2403
toll bridge authority, commission acts as, 32-2701
transfer of functions to department of highways, 82A-703
patrol board functions transferred to department of law enforcement, 82A-1205
vacancies on commission, filling, 32-2403
weight of vehicles on highways, studies and testing by commission, 32-2411

State highway department reorganized, 82A-701 to 82A-708—See REORGANIZATION OF STATE GOVERNMENT, Department of highways

State highways
bypassing of municipality, when consent of governing body required, 32-1628
canal or ditch crossing by highway, duty of owners to prepare crossing, 32-3918
continuation of state highway until properly abandoned or vacated, 32-3917
contracts for work on highways to be let by highway commission, 32-4101
bond required of contractors, 32-4103
competitive bidding, when required, 32-4102
counties doing work, agreements for, 32-4102
preference to resident bidders, 32-4102
wage scale to be paid by contractors, 32-4101
county road, transfer to state highway system, 32-4016
designation of highways by highway commission, 32-2407
fencing along highways through open range, 32-2426, 32-2427
municipalities, payment of construction and maintenance costs within, 32-1627
railroad crossing by highway, duty of railroad to prepare crossing, 32-3918
seeding along state highways, 32-2412
weed control by county board, 32-2814

Toll bridges
abolition of toll bridge authority and transfer of functions, 82A-702
bond issues
additional bonds authorized if proceeds of original sale insufficient, 32-3504
construction fund, credits to and expenditures from, 32-3507
deposit of funds, 32-3506
disclaimer of general obligation of state, 32-3501
extension of time, covenant against, 32-2709
form of bonds, 32-3502
funds created for each bond series, 32-3506
lien of bondholders on proceeds of sale, 32-3505
maturity dates of bonds, 32-3502
negotiability of bonds, 32-3501
pledge of revenues permitted, 32-2707
proceeds of sale, restrictions on use, 32-3504
rate provisions, covenants as to, 32-2707
redemption before maturity, provisions for, 32-3502
registration of bonds, provisions for, 32-3503
remedies of bondholders, provisions for, 32-2709
replacement of lost, destroyed or mutilated bonds, provision for, 32-2709
reserve and contingency funds, provisions as to, 32-2707
reserve fund, provision for, 32-3509
resolution for issuance of bonds, contents and adoption, 32-3501
retirement of bonds, sinking fund used for, 32-3509
bridge becomes free after retirement, 32-2716
revenue fund, credits to, 32-3508
disbursements and transfers from revenue fund, 32-3509
sale of bonds, 32-3503
security of bondholders, provisions for, 32-2709
signatures valid though signer no longer in office, 32-3501
sinking fund, payments into and disbursements from, 32-3509
surplus proceeds of sale, disposition, 32-3504
temporary bonds, authority to issue, 32-3502
terms of bonds determined by authority, 32-3502
construction contracts by competitive bidding, 32-2712

HIGHWAYS, BRIDGES AND FERRIES (Continued)
Toll bridges (Continued)
cost estimates to be made by toll bridge authority, 32-2703
distance of bridge from existing free bridge, 32-2704
distance of new public bridges from existing toll bridge, 32-2715
engineer to have charge of bridges and toll collections, 32-2713
financial accounts and statements required, 32-2714
findings as to revenues and costs required for construction of bridge, 32-2703
free public bridge after retirement of bonds, 32-2716
highway commission as toll bridge authority, 32-2701
instruments of authority, execution and attestation, 32-2701
officers of toll bridge authority, 32-2701
petition required for construction within fifty miles of free bridge, 32-2704
action by toll bridge authority on petition, 32-2706
contents of petition, 32-2705
form and certification of petition, 32-2705
resolution of toll bridge authority on petition, 32-2706
sufficiency of petition, findings of toll bridge authority conclusive, 32-2706
powers of toll bridge authority, 32-2702
rates, tolls and charges, fixing by toll bridge authority, 32-2710
bond provisions for establishment of rates, 32-2707
exemption of governmental vehicles from payment of tolls, 32-2707
revenue fund, deposits in and transfers from, 32-2711
records open to public inspection, 32-2714
reserve and contingency funds, creation and deposit of moneys, 32-2708
bond provision requiring reserves, 32-2707
resolution of public convenience and necessity, requirement and contents, 32-2703
petition for construction within fifty miles of existing bridge, resolution on, 32-2706
retirement of bonds, bridge becomes free after, 32-2716
revenue fund, deposits in and transfers from, 32-2711
right of way acquisition for toll bridge, 32-3919
seal of authority, affixing to instruments and records, 32-2701
Traffic safety program
definition of terms, 32-4602
federal program, participation of state, 32-4605
funds, acceptance and use, 32-4606
governor to administer act, 32-4605
highway traffic safety board, creation, 32-4603
abolition of board and transfer of functions, 82A-902
duties, 32-4605
organization, 32-4604
local programs, approval required, 32-4607
purpose of act, 32-4601
superintendent of public instruction responsible for driver education, 32-4605
Trees along highways, injury to, 32-4402, 94-3202
Utility facilities, location along Federal-aid and interstate highways, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Violations of highway code, prosecution, 32-2418
Wage scales of contractors, 41-701
penalties for violations, 41-703
Water overflowing highway, liability for damages and repairs, 32-4404
Weed control along highways, 32-2814
Weigh stations along highways, 32-1126
Weight of vehicles on highways
co-operative studies by highway commission and other agencies, 32-2411
fines and penalty assessments, disposition of, 32-1131
interstate and defense highways, 32-1123
Width required for roads, 32-2808

HISTORICAL SOCIETY OF MONTANA
Agency of state government, 44-516
Antique automobile collection, use of proceeds, 44-529

HISTORICAL SOCIETY OF MONTANA (Continued)
Board of trustees
appointment and terms of members, 44-519
continuation in advisory capacity, 82A-507
duties of board, 44-523
executive committee, selection and duties, 44-521
functions transferred to director, 82A-505
mileage reimbursement of trustees, 44-522
powers of board, 44-523
qualifications of trustees, 44-520
Commercial enterprises authorized, 44-525
Continuation and perpetuation as "Montana Historical Society," 44-516
Definition of terms, 44-517
Department of education, transfer of society to, 82A-503
Director, powers and duties, 44-524
continuation of position, 82A-504
functions transferred to director, 82A-505
Fine arts' commission property, transfer to society, 44-528
Fund raising drives authorized, 44-525
Library independent of other libraries, 44-518
Microfilm division, creation and function, 82-3205
Moneys received by society, deposit and use, 44-527
Museum independent of other institutions, 44-518
Purposes of society, 44-516
Quarters in Veterans and Pioneers Memorial Building, 44-526, 78-202
Seal of society, description, 44-525

HISTORIC AND PREHISTORIC STRUCTURES
Constitutional provision for preservation and administration, 1972 Const., IX, 4
State Antiquities Act, 81-2501 to 81-2514
advisory council, appointment authorized, 81-2513
co-operation with federal, state and local governmental agencies, 81-2509
co-operative agreements with private owners, contents, 81-2508
definition of terms, 81-2503
discovery of sites or objects on state lands, report required, 81-2512
distribution of collections to be made on loan only, 81-2506
inconsistent laws superseded, 81-2514
injunction to prevent waste, destruction and removal, protective program pending period of injunction, 81-2510
permit required to excavate, remove or restore registered site or object, 81-2505
violation as misdemeanor, penalty, 81-2511
purpose, 81-2502
short title, 81-2501
sites and objects on state land, registration and protection, 81-2504
state historical register authorized, contents, 81-2507
violations as misdemeanor, penalty, 81-2511

HOISTING ENGINES
License required for operation of engine, 69-1601
classes of engineers, 69-1601
exemptions from requirement, 69-1603
previous licensees, issuance of license to, 69-1604

HOLIDAYS
Bank closing, holidays on which permitted, 19-107
Good Roads Day, annual observance, 32-4401
School holidays and days of special observance, 75-7406, 75-7407

HOMES FOR THE AGED
See NURSING HOMES

HOMESTEADS
Liberal laws to be enacted, 1972 Const., XIII, 5

HOMICIDE
State criminal jurisdiction, 95-304
Venue, death and cause of death in different counties, 95-406

HORSE RACING
Commission renamed as board and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment and terms of members, 62-501
chairman of commission, selection, 62-503
continuation in office of board members, 82A-1606
duties of commission, 62-505
employment of personnel for board, 82A-1604
expenses of commission, 62-503
auditing and approval of expenses, 62-505
legal assistance in hearings by board, 82A-1604
per diem and expenses of members, 63-503
qualifications of members, 62-501
quorum of commission, 62-503
records and reports of commission, 62-504
removal of commissioner for cause, 62-501
retention of functions by board, 82A-1605
supervisory powers of commission, 62-506
vacancies on commission, filling, 62-501
Days of week when racing permitted, 62-508
Definition of terms, 62-502
Liability insurance required of licensees, 62-510
Licenses
cancellation or revocation of license, 62-507
conviction of crime precluding issuance of license, 62-507
fairs to comply with license requirements, 62-507
participants in race meet to have license, 62-505
penalty for unlicensed operation, 62-508
race meets, license required for, 62-507
Montana bred horses, special races for, 62-509
Parimutuel betting permitted, restrictions, 62-511
percentage of pool retained by licensee, 62-512
tax on bets withheld by licensee, 62-513
tax on gross receipts, collection and disposition, 62-514
Rules and regulations governing race meets and parimutuel system, 62-505
Supervisory powers of commission, 62-506
Violations of act as misdemeanor, 62-508
Visitations and inspections by commission, 62-506

HOSPITALS AND RELATED FACILITIES
Advisory council on hospitals and long-term care facilities, composition and appointment, 69-5214
abolition of council, 82A-609
meetings of council, 69-5215
terms of members, 69-5215
Alcoholic beverage, administration by hospital, 4-139
Alterations to be approved by state board, 69-5212
Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
Confidential nature of information received by state department, 69-5218
Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
Counties, powers of commissioner, 16-1008A.
Discrimination prohibited in subsidized facilities, 69-5313
Extended care facilities defined, 69-5201
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Freedom of choice of physician protected, 69-5217
In-hospital medical staff committees, information available to, 69-6301 to 69-6304

HOSPITALS AND RELATED FACILITIES (Continued)
Injunction for protection of health and welfare, 69-5220
Joint county hospitals authorized, 16-1040
definition of terms, 16-1039
terms of contract between counties, 16-1041
state aid in construction, application for, 69-5312
License required for operation of facility, 69-5203
application for license, procedure, 69-5205
definition of terms, 69-5201
denial, suspension or revocation of license, grounds, 69-5209
judicial review of denial, suspension or revocation, 69-5211
procedure for denial, suspension or revocation, 69-5210
federal facilities exempt from requirement, 69-5202
fee for license, 69-5204
inspection of hospital and issuance of license, 69-5206
penalty for violations of licensing chapter, 69-5221
records and reports required of facilities, 69-5219
rules and standards to be promulgated by department, 69-5213
unlawful use of term "nursing," 69-5203.1
Malpractice, statute of limitations, 93-2624
Occupational disease reports, contents and filing, 69-4204
Phenylketonuria test required at birth, 69-4116
Rules and standards, adoption by state board, 69-5216
Survey and construction of hospitals
application for construction projects, agencies entitled to file, 69-5309
hearing and forwarding of application to federal agency, 69-5310
consolidated facilities serving two or more counties, application and construction, 69-5312
contracts with federal agencies authorized, 69-5302
definition of terms, 69-5301
federal funds, acceptance and use, 69-5311
plans for construction of facilities, preparation and submission, 69-5305
publication and hearing before submission, 69-5306
relative need specified in plan, 69-5308
rules for administration of chapter, 69-5304
standards for maintenance and operation of subsidized facilities, 69-5307
state department of health as principal agency, 69-5302
powers and duties of state department, 69-5303
Unemployment compensation coverage of employees, 87-110
Vital statistics information to be furnished by institution, 69-4430

HOTELS AND MOTELS
Co-operative agreements for enforcement of regulations, 34-306
Declaration of policy of regulatory law, 34-301
Definition of terms, 34-302
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831
Inspections by state and local officers, 34-307
License required, 34-303
cancellation of license, procedure, 34-305
denial of license, procedure, 34-305
duration of license, 34-304
fee for license, 34-304
superseding other fees, 34-310
penalty, 34-309
Penalty for violation of act or regulations, 34-309
Rules, promulgation, 34-306

HOUSE TRAILERS
Construction standards, compliance with required, 69-2123
definition of terms, 69-2121
fees for inspections, 69-2124
legislative findings and policy, 69-2122

HOUSE TRAILERS (Continued)
Construction standards (Continued)
rules and regulations establishing standards, 69-2122
testing of models, 69-2124
Fees in addition to registration and license fees, 32-3305
Taxation of, 84-6601 to 84-6607—See TAXATION, Mobile homes

HUSBAND AND WIFE
Abandonment of wife without support as misdemeanor, 94-301
Alienation of affections
acts within state not to give rise to cause of action, 17-1203
cause of action abolished, 17-1201
litigation and threat of litigation prohibited, 17-1204
penalty for bringing action, 17-1206
settlement and compromises void. 17-1205
Conciliation of controversies
agreement between parties, reduction to writing, 36-204
budget for conciliation court, 36-203
citation of act, 36-201
confidential nature of communications, 36-203
counselor for conciliation, appointment and duties, 36-203
counties in which chapter applies, determination by district judges, 36-202
court of conciliation, designation, 36-203
powers of court, 36-205
definition of terms, 36-202
discretionary jurisdiction where no children involved, 36-204
fees not charged in conciliation proceedings, 36-204
filing of petition for conciliation, 36-204
hearings, time and place, 36-204
judge of conciliation court, selection, 36-203
jurisdiction of courts, 36-203
orders for conduct of parties, 36-204
petition for conciliation, form, contents, and filing, 36-204
powers of conciliation court, 36-205
privacy of hearings, 36-203
probation officer, assistance to conciliation court, 36-203
procedure for conciliation, 36-204
purposes of chapter, 36-202
reference of controversy to counselor, 36-203
short title of act, 36-201
stay of other proceedings during attempted conciliation, 36-204
Married minors, consent to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
Nonsupport of wife as misdemeanor, 94-301
Separate maintenance, action for
stay of proceedings to attempt reconciliation, 21-135.1
conciliation petition filed, 36-204
waiting period before decree granted, 21-135.1

I

ICE CREAM
See DAIRIES AND DAIRY PRODUCTS, Manufactured dairy products, 3-2488 to 3-24-137

IDENTIFICATION CARDS
See HIGHWAY PATROL, Identification cards, 31-170 to 31-174
False procurement, penalty, 94-2014

ILLEGALITY
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)

ILLEGITIMATE CHILDREN
Disclosure of illegitimacy, court order required for, 69-4422

ILLEGITIMATE CHILDREN (Continued)
Legitimation, new birth certificate issued after, 69-4423
Support obligations of father, 93-2901-1 to 93-2901-11—See BASTARDY PROCEEDINGS

IMPEACHMENT OF PUBLIC OFFICERS
Conviction, vote required, 1972 Const., V, 13
Governor or lieutenant governor on trial, chief justice to preside, 95-2802
Grounds for impeachment, 95-2801
Initiation of proceedings in house of representatives, vote required, 1972 Const., V, 13; 95-2802
Officers subject to impeachment, 1972 Const., V, 13; 95-2801
Removal from office upon conviction, 1972 Const., V, 13
Senate as tribunal, vote required for conviction, 1972 Const., V, 13; 95-2802

IMPROVEMENTS
Limitation of actions for damages from construction of improvements to real property, 93-2619 to 93-2623

INALIENABLE RIGHTS
Enumeration of rights of persons, 1972 Const., II, 3

INCOME TAX
Corporation income tax, 84-6901 to 84-6908—See TAXATION, Corporation income tax

INDIANS
Co-ordinator of Indian affairs transferred to department of integovernmental relations, 82A-903
Criminal jurisdiction of Flathead Indian country
  county commissioners' consent required for assumption of jurisdiction, 83-802
  customs and culture of Indians to be preserved, 83-805
  date of assumption of jurisdiction, 83-803
  obligation of state to assume jurisdiction, 83-801
  proclamation of governor assuming jurisdiction, 83-802
  resolution of tribes requesting state jurisdiction, 83-802
  rights, privileges and immunities preserved, 83-804
  withdrawal of tribal consent to state jurisdiction, 83-806
Curriculum of certain public schools to include Indian studies, 75-6129, 75-6130
  definition of terms, 75-6130
  duties of boards of trustees, 75-6131
  legislative declaration of policy, 75-6129
  other schools encouraged to comply with requirements, 75-6132
  teachers to be qualified in certain schools, 75-6131
Education, preservation of cultural integrity, 1972 Const., X, 1
Lands under jurisdiction of Congress, 1972 Const., I
Sale of imitation Indian articles
  authentic articles, designation of, 85-303
  definitions, 85-301
  imitation articles to be identified as such, 85-302
  violation, misdemeanor, 85-304
Schools, compulsory attendance by children, 75-6309
University system, admittance to without payment of fees, 75-8705

INDICTMENT
See GRAND JURY, 1972 Const., II, 20; 95-1401 to 95-1423, 95-1501 to 95-1506

INDUSTRIAL DEVELOPMENT
Bonds, issuance by county or municipality, terms and sale, 11-4103
  proceeds of sales, use, 11-4107
  refunding of bonds, 11-4106
  security of bondholders, provisions for, 11-4104

References are to Title and Section numbers

INDUSTRIAL DEVELOPMENT (Continued)
Costs, determination by governing body, 11-4105
elements included in cost, 11-4107
Definition of terms, 11-4101
Lease of project, terms and conditions, 11-4105
cost of project, elements included, 11-4107
Mortgage to secure bonds, terms permitted, 11-4104
Powers of municipality or county, 11-4102
cumulative nature of powers, 11-4109
State planning board to give advice and information, 11-4110
Taxation of property, 11-4108

INDUSTRIAL HYGIENE
Prevention of occupational disease, 69-4206 to 69-4221—See OCCUPATIONAL HEALTH
Reports on occupational disease by physicians and hospitals, 69-4204

INDUSTRIAL SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

INFORMATION
See CRIMINAL PROCEDURE, Information, 95-1301 to 95-1303; 95-1501 to 95-1506

INHERITANCE TAX
Adjustments of tax on payment of debts by legatee, 91-4418
Charitable exemption, 91-4414
Clear market value, tax imposed on, 91-4407
Deductions, 91-4407
Discount for payment within eighteen months, procedure in case of refund, 91-4416, 91-4418
Estimated amount of tax, deposit with clerk of court, 91-4418
Exemptions from tax, 91-4414
Lien of tax on property transferred, 91-4415
Proceeds of tax, disposition, 84-1901
State department of revenue, tax paid to, 91-4415, 91-4450
Transfer of property within three years of death
appraisal and certification of value by department, 91-4461
certificate of inheritance tax due, 91-4463
county clerk to furnish description to department, 91-4460
form provided to grantee, contents, 91-4462
inclusion of property in gross estate of decedent, 91-4465
maximum value subject to special procedure, 91-4467
payment by grantee of tax due, 91-4464
purpose of special procedure, 91-4467
Waiver of tax of surviving spouse, 91-4414.1

INITIATIVE AND REFERENDUM
Attorney general's summary of measures for placement on ballot, 37-104.1
Constitutional revision
initiative for call of convention or amendment, 1972 Const., XIV, 2, 9, 10; 37-201 to 37-203
provisions of Article III not applicable, 1972 Const., III, 8
referendum on call of convention or amendment, 1972 Const., XIV, 1, 8
Counties, 37-301 to 37-311—See COUNTIES, Initiative and referendum
Elections on measures, general or special, 1972 Const., III, 6
Initiative petitions, contents, signing, filing, 1972 Const., III, 4
appropriations of money excepted, 1972 Const., III, 4
constitutional convention or amendment, initiative for, 1972 Const., XIV, 2, 9, 10; 37-201 to 37-203
Article III provisions not applicable, 1972 Const., III, 8
gambling may be authorized, 1972 Const., III, 9
local or special laws excepted, 1972 Const., III, 4

INITIATIVE AND REFERENDUM (Continued)
Local government, powers reserved to qualified electors of local government unit, 1972 Const., XI, 8
intergovernmental co-operation, initiative or referendum for, 1972 Const., XI, 7
self-government charters, initiative for, 1972 Const., XI, 5
Number of qualified electors, how determined, 1972 Const., III, 7
Referendum, order by legislature or petition, 1972 Const., III, 5
appropriation of money excepted, 1972 Const., III, 5
constitutional convention or amendment, submission by referendum, 1972 Const., XIV, 1, 8
provisions of Article III not applicable, 1972 Const., III, 8
signing and filing of petition, 1972 Const., III, 5
Reservation of powers by the people, 1972 Const., V, 1
Statement by secretary of state for referendum measures, 37-104.1
Suspension of referred act, requirements, 1972 Const., III, 5

INJUNCTIONS
Appeal pending, suspension or modification of injunction, M. R. Civ. P., Rule 62(c)
Consumer loan act violations, enjoining, 47-227
Cosmetology licensing act, enjoining violations, 66-817
Dairy product violations, enjoining, 3-2496
Dentistry, enjoining unauthorized practice, 66-911
Psychology, enjoining unlawful practice, 66-3214
prosecution by board of examiners, 66-3207
Statutory provisions unchanged by rules, M. R. Civ. P., Rule 65
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court
ex parte proceedings in supreme court, M. R. App. Civ. P., Rule 40
Tramway safety requirements, compelling compliance with, 69-6613

INQUESTS
Coroner's inquests, 95-803 to 95-809—See COUNTY CORONER, Inquests

INSANE AND MENTALLY ILL
Criminal cases, provisions relating to competency of accused, 95-501 to 95-509—See CRIMINAL PROCEDURE, Competency of accused
Division of mental hygiene
clinics and community services, 80-2406
discrimination in providing services prohibited, 80-2409
powers and duties of division, 80-2403
public mental health programs, control by department of institutions, 80-2405
continuation of existing services, 80-2408
regions, conformity to state plan, regional mental health boards, duties, 80-2407
standards for mental health programs, 80-2405
state funds, limitation on appropriations, 80-2406
state hospital in division, 80-2401
supervisor of division, 80-2402
Glasgow center, staffing, supervision by board of institutions, 80-2410, 80-2411
Hearing and examination
certificate by physicians, form, 38-207
moneys of person committed, custody and disposition, 38-210
rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Interstate compact on mental health enacted, text, 80-2412
Miles City center, staffing, supervision by board of institutions, 80-2410, 80-2411
Release of insane person to friends outside state, 38-107
Release of insane person to institution outside state, 38-108
Representation in actions by and against, M. R. Civ. P., Rule 17(c)
Retarded persons—See MENTAL RETARDATION
Service of process on persons of unsound mind, M. R. Civ. P., Rule 4D(2)
State hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL
Terminology used in law, change, 38-121
Voluntary admission for diagnosis and treatment of mental illness, 38-406.1, 38-406.2
Warm Springs state hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL

References are to Title and Section numbers

INSECTICIDES
See PESTICIDES, 27-213 to 27-245

INSECTS
Aquatic insects, commercial exportation prohibited, 26-708

INSTALLMENT SALES ACT
Complaints regarding violations, 74-605
Contents of installment contract, 74-607
Contracts
containing in more than one document, when authorized, 74-607
delivery to buyer, 74-607
refinancing, 74-610
required contents, 74-607
writing, requirements, 74-607
Definitions, 74-602
Delinquency charge, 76-607
Filling in of blank spaces after signing of contract, 74-607
Finance charges
charge accounts, maximum charges on, 74-608
computation, method, 74-608
maximum on motor vehicles, 74-608
maximum on service and goods other than motor vehicles, 74-608
Insurance, requiring of buyer, when authorized, 74-607
Investigative power of superintendent, 74-605
License of sales finance company
application, 74-603
banks, trust companies or savings and loan associations, excepted, 74-603
expiration, 74-603
fee, 74-603
license not transferable or assignable, 74-603
posting of license on premises, 74-603
required, 74-603
suspension, revocation or failure to renew
grounds, 74-604
hearing, 74-604
judicial review, 74-604
Prepayment, refund, 74-609
Refinancing of contract, 74-610
Refunds on prepayments, 74-609
Rules and regulations, 74-606
Secured transactions, application to, 87A-9-203
Secured Transactions chapter, effect on installment act, 87A-9-201
Short title, 74-601
Subpoena power of superintendent, 74-606
Superintendent
investigations, power, 74-605
powers, 74-606
Transfer of equity in goods by buyer, 74-607
Violations of act, penalties, 74-611
Waiver of provisions of act unenforceable and void, 74-612

INSURANCE
Adjusters
affidavit as to lost, stolen or destroyed license, 40-3331
attorneys excluded from definition, 40-3306
definition of term, 40-3306
examinations by commissioner, 40-2714
conduct of examination, 40-2715
expenses of examination, 40-2717
reports on examination, 40-2716
fees payable to commissioner, 40-2726

References are to Title and Section numbers

INSURANCE (Continued)
Adjusters (Continued)
license required, 40-3327
acting without license, penalty, 40-3332
continuation of license, 40-3328
expiration of license, 40-3328
qualifications of licensee, 40-3327
refusal to continue license, 40-3329
return of license after expiration, suspension or revocation, 40-3331
revocation of license, 40-3329
procedure following revocation, 40-3330
suspension of license, 40-3329
procedure following suspension, 40-3330
out of state adjusters, when license not required, 40-3327
Advisory board contract, offer as inducement to insurance prohibited, 40-3513
Agents and solicitors
affidavit as to lost, stolen or destroyed license, 40-3331
appointment by insurer required, 40-3307
continuation of appointments, 40-3317
filing of appointments, 40-3317
termination of appointment, 40-3317
rights of agent following termination, 40-3318
Consumer Loan Act lender not to require insurance through particular agent, 47-214
corporations, licensing as agents, 40-3310
countersignature of policy required, 40-2822
commission of resident agent on policy originating outside state, 40-2824
issuance of policy at home or branch office, 40-2825
nonresident agent may not sign, 40-3336
salaried personnel prohibited from countersigning, 40-2823
definition of terms
"agent," 40-3302
"life insurance agent," 40-3303
"solicitor," 40-3304
employees of agents and insurers excluded from definition, 40-3305
examination of affairs by commissioner, 40-2714
conduct of examination, 40-2715
expenses of examination, 40-2717
reports on examination, 40-2716
exchange of business, 40-3325
firms, licensing as agents, 40-3310
fraternal benefit society agents, 40-5344 to 40-5349—See Fraternal benefit societies, agents, below
group insurance, acts to implement excluded from definition, 40-3305
license required, 40-3307
acting without license, penalty, 40-3332
application for license, contents and filing, 40-3312
association of agents, licensing, 40-3311
contents of license, 40-3315
continuation of licenses, 40-3328
corporations, licensing, 40-3310
countersigning of policies, by resident agents only, 40-3336
display of license in place of business, 40-3323
examination of applicants for license, 40-3313
conduct of examination, 40-3314
existing licenses, expiration and renewal, 40-2612
expiration of license, 40-3328
fees payable to commissioner, 40-2726
firms, licensing, 40-3310
forms prescribed and furnished by commissioner, 40-3307
issuance of license, 40-3315
number of licenses required of agent, 40-3316
qualifications of licensees, 40-3308
life insurance agents, 40-3309

INSURANCE (Continued)
Agents and solicitors (Continued)
license required (Continued)
reciprocity as to nonresident agents, 40-3333 to 40-3335
refusal to continue license, 40-3329
return of license after expiration, suspension or revocation, 40-3331
revocation of license, 40-3329
procedure following revocation, 40-3330
separate license required for each life or disability insurer, 40-3316
service of process on nonresident agents, 40-3337
suspension of license, 40-3329
procedure following suspension, 40-3330
temporary licenses, issuance, 40-3319
rights under temporary license, 40-3320
misappropriation of funds by agent as larceny, 40-3324
nonresident agent subject to insurance code, 40-3338
place of business to be maintained in state, 40-3323
premiums, reporting and accounting for, 40-3324
records to be maintained by agents, 40-3323
surplus line insurance, 40-3419
retaliatory tax provisions, 40-2826
revocation or suspension of insurer's certificate, effect on agent's authority, 40-2816
salaried employees of insurers excluded from definition, 40-3305
scope of chapter, 40-3301
sharing of commission, 40-3325
solicitors, rights and relationship with agent, 40-3321
surplus line agent, license, fee and bond, 40-3414
authority under license, 40-3415
revocation of license, 40-3422
vending machine licenses, 40-3322
Amount of insurance on one risk by one insurer limited, 40-2909
Annuity contracts, 40-3818 to 40-3825—See also Life insurance, below
deferred annuities incidental to life insurance not included in provisions, 40-3818
dividends, provision for, 40-3823
entire contract included in written contract, 40-3821
exemption from securities act, 15-2004
grace period for payment of premiums, 40-3819
incontestability clause, 40-3820
misstatement of age or sex, provision for adjustment of payments, 40-3822
participating contracts, provision for dividends, 40-3823
reinstatement provisions, 40-3824
reversionary annuities, standard provisions, 40-3825
single premium contracts, inapplicable provisions omitted, 40-3818
standard provisions required, 40-3818
Application for insurance
admissibility in evidence of application, 40-3712
alteration of application prohibited, exception, 40-3712
form of application, approval required, 40-3714
grounds for disapproval, 40-3715
insured must apply for life or disability insurance, exceptions, 40-3711
statements and descriptions in application, effect on contract, 40-3713
Arrest bond certificates, 95-1121 to 95-1123
Automobile insurance, reimbursement for total loss to be based on actual replacement value, 40-4404
Benefit certificate, offer as inducement to insurance prohibited, 40-3513
Benevolent associations
agents, appointment and licensing, 40-4909
officers as agents, 40-4910
amendment of articles, rules or contract, filing, 40-4907
annual license, expiration and renewal, 40-4918
annual statement of association, contents and filing, 40-4916
assessments of members
death benefit, assessment to pay, 40-4915
expenses, assessments to cover, 40-4913

INSURANCE (Continued)
Benevolent associations (Continued)
death claims, numbering and payment, 40-4914
assessment of members for payment, 40-4915
definition, 40-4902
exemption from general provisions of code, 40-2610
expenses, annual maximum, 40-4913
foreign associations excluded, 40-4906
laws applicable, 40-4901, 40-4917
"member" defined, 40-4903
"membership contract" defined, 40-4904
minimum membership, 40-4912
new associations prohibited, 40-4906
officers of association
agents, acting as without license, 40-4910
definition, 40-4905
number of officers permitted, 40-4908
receipt or evidence of payment to association to be issued, 40-4911
scope of chapter, 40-4901
treasurer, bond, 40-4908
Binders for temporary insurance, effect, 40-3726
Boycotts prohibited, 40-3508
Casualty insurance
definition, 40-2905
reserve for unearned premiums, 40-3005
sovereign immunity, waiver of defense required
policies issued to public agencies, 40-4402
state-owned properties, 40-4401
unfair discrimination prohibited, 40-3512
uninsured motorist coverage included unless rejected by insured, 40-4403
Claims for losses
acts by insurer not deemed waiver of defenses, 40-3733
forms for proof of loss to be furnished by insurer, 40-3732
Coercive practices prohibited, 40-3508
Commercial air operators required to carry insurance, 1-314
amount set by aeronautics commission, 1-315
continuation in force required, 1-318
evidence of insurance deposited with commission, 1-316
copies of policies acceptable as evidence, 1-317
rules established by commission, 1-319
unauthorized insurers' policies acceptable, 1-321
violation of act as misdemeanor, 1-320
Commissioner of insurance—See Department of insurance, below
Common owners, transfer of interest by one does not avoid insurance, 40-3708
Companies—See Insurers, below
Compliance with applicable provisions of code required, 40-2609
Consumer loan act, restrictions and limitations concerning with regard to consumer loans, 47-214
County funds, use to pay indemnity insurance premiums, 16-1001
Coverages not mutually exclusive, 40-2901
Credit life and disability insurance
amount of insurance permitted, 40-4206
application for insurance, copy delivered to debtor, 40-4209
authorized insurers only to issue policies, 40-4212
citation of chapter, 40-4202
claims for losses, 40-4213
competition not prohibited or discouraged, 40-4201
Consumer Loan Act, insurance required under, 47-214
contents of policy or certificate, 40-4208
definition of terms, 40-4204
enforcement powers of commissioner, 40-4215
forms, filing, approval and withdrawal, 40-4210
forms of insurance enumerated, 40-4205
judicial review of commissioner's orders, 40-4216

INSURANCE (Continued)
Credit life and disability insurance (Continued)
liberal construction of chapter, 40-4201
penalties for violation of commissioner's orders, 40-4217
policy or certificate to be delivered to debtor, 40-4208
premium rates, filing and compliance, 40-4211
limit on amount charged, 40-4211
purpose of chapter, 40-4201
refund of excess and unused premiums, 40-4211
scope of chapter, 40-4203
selection of policy or insurer left to debtor, 40-4214
term of coverage, 40-4207
time of delivery of policy or certificate to debtor, 40-4209
Death of insured, passage of property insurance to successor in interest, 40-3707
Deceptive practices prohibited, 40-3502
Definition of terms, 40-2602 to 40-2608
types of coverage not mutually exclusive, 40-2901
types of insurance, 40-2901 to 40-2908
Department of insurance
appeals from commissioner, 40-2725
appropriation of funds by legislative assembly, 40-2702
certificates and certified copies as evidence, 40-2708
commissioner
attorney-in-fact for service of process on nonresident agent, 40-3337
control and supervision of department, 40-2702
definition of "commissioner," 40-2605
delegation of authority, 40-2706
power to impose fine, 40-2709
responsibility for acts of assistants and employees, 40-2706
seal of office, description and use, 40-2703
state auditor ex-officio commissioner, 40-2701
compensation of employees limited to that provided by law, 40-2705
contractual services, procurement by commissioner, 40-2704
creation of department, 40-2702
definition of "commissioner" and "department," 40-2605
employment and compensation of deputies and assistants, 40-2704
evidence produced before commissioner or examiner, 40-2718
examinations by commissioner
adjusters, 40-2714
agents and solicitors, 40-2714
conduct of examinations, 40-2715
expenses of examination, 40-2717
insurers, 40-2713
managers and promoters, 40-2714
reports on examinations, 40-2716
fees collectible for certificates, licenses and copies of documents, 40-2726
financial interest in insurers prohibited to employees of department, 40-2705
fire prevention advisory commission, appointment, 82-1201
hearings by commissioner
authority for hearings, 40-2720
demand for hearing, 40-2720
notice of hearing, 40-2722
orders on hearing, 40-2724
procedure on hearings, 40-2723
stay of action pending hearing, 40-2721
notices by commissioner, contents and service, 40-2711
orders of commissioner, contents and service, 40-2711
powers and duties in general, 40-2709
records of proceedings, 40-2707
rules and regulations, adoption, 40-2710
service of process through commissioner, 40-2818, 40-2819
witnesses before commissioner or examiner, 40-2718, 40-2719
Deposits through commissioner
amounts required, 40-2809
appraisal of assets deposited, 40-3208

INSURANCE (Continued)
Deposits through commissioner (Continued)
assignment of securities to commissioner and successors, reassignment, 40-3207
bank or trust company as custodian, 40-3204
custodial arrangements, 40-3204
deficiency in deposits, 40-3212
deposits subject to chapter, 40-3201
excess deposits authorized, 40-3210
income to be paid to depositor, 40-3209
inspection rights of depositor, 40-3209
levy on deposits, 40-3211
liability as to safekeeping of deposits with custodian, state and commissioner exempt, 40-3206
life insurance policy reserves, 40-3012
purpose of deposits, 40-3202
records as to assets and securities deposited, 40-3205
release of deposit, 40-3213
safe deposit boxes used for safekeeping of deposits, specifications, 40-3204
securities eligible for deposit, 40-3203
substitution of other eligible assets, 40-3209
time for which deposits held, 40-3213
Desist orders for prohibited practices, 40-3514
Disability insurance
age of applicant, acceptance of premiums after maximum is reached, 40-4032
apportionment of loss with other insurers, 40-4021
expense incurred benefits, 40-4020
autopsy, right of insurer to require, 40-4013
blanket disability insurance
applications and certificates not required, 40-4106
definition of term, 40-4104
persons to whom payable, 40-4107
required provisions of policy, 40-4105
bylaws of insurer, incorporation by reference in policy prohibited, 40-4002
change of beneficiary, rights reserved to insured, 40-4015
change of occupation, adjustment of premiums and benefits, 40-4017
charter of insurer, incorporation by reference in policy prohibited, 40-4002
claims for losses
forms for filing of claims, 40-4009
notice of claim, provision for, 40-4008
persons to whom payable, 40-4012
proofs of loss, 40-4010
time allowed for payment before bringing action, 40-4014
time of payment provision, 40-4011
conformity with state statutes provision, 40-4024
consideration to be expressed in policy, 40-4002
credit disability insurance—See Credit life and disability insurance, above
deduction of unpaid premiums from payment of claim, 40-4023
definition, 40-2903
earnings, relation to insurance, 40-4022
effective date of policy to be expressed, 40-4002
entire contract to be incorporated in policy, 40-4004
exceptions to be stated in policy, 40-4002
excess insurance with same insurer void, provisions for, 40-4019
excess risk, placement by agent with insurer other than that as to which licensed, 40-3326
foreign jurisdiction, conformity to requirements, 40-4030
format of policy, 40-4002
franchise insurance plan, 40-4033
grace period for payment of premiums, 40-4006
group disability insurance, eligible groups, 40-4101
direct payment for medical services, 40-4103
newborn infants to be covered in family policy, 40-4101, 40-4102
required provisions of policies, 40-4102

INSURANCE (Continued)
Disability insurance (Continued)
handicapped children, continued coverage during adulthood
group contracts, 40-3739, 40-3740
individual contracts, 40-3738, 40-3740
illegal occupation exclusion, 40-4025
inapplicable provisions, omission from policy, 40-4003
incidental to life insurance, not covered by chapter, 40-4001
incontestability provisions, 40-4005
intoxication exclusion, 40-4026
minors, power to contract for insurance, 40-3710
misstatement of age, adjustment of benefits, 40-4018
narcotics exclusion, 40-4026
newborn infants to be covered in family policy, 40-4002.1
issuance of policy with exclusionary provision prohibited, 40-4002
nonconforming policies, construction, 40-4031
number of persons to be insured by one policy, 40-4002
older persons, extended insurance for, 40-5401 to 40-5408—See Health insurance for persons over 65, below
optional policy provisions, form required, 40-4016
order of required and optional provisions in policy, 40-4028
physical examination, right of insurer to require, 40-4013
physicians, freedom of choice, 40-4108
scope of practice not enlarged, 40-4109
reduction in indemnity to be stated in policy, 40-4002
reinstatement of lapsed policy, 40-4007
rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326
renewal of policy, provision for insurer's right to refuse, 40-4006, 40-4027
required provisions, insertion in policy, 40-4003
reserve for unearned premiums, 40-3007
rules of insurer, incorporation by reference in policy prohibited, 40-4002
scope of chapter, 40-4001
state institution services deemed covered by policy, 40-4037
issuance of policy with exclusionary provision prohibited, 40-4035
"issued in Montana" defined, 40-4036
rate of payment for state institution services, 40-4038
substitutions for optional policy provisions, 40-4016
substitutions for required policy provisions, 40-4003
termination date of policy to be expressed, 40-4002
third party ownership permitted, 40-4029
violations of chapter, penalty, 40-4034
Discharge of insurer by payment, 40-3730
minor may give acquittance, 40-3731
Discriminatory practices prohibited
life and disability insurance, 40-3509
exceptions, 40-3511
property, casualty and surety insurance, 40-3512
Endowment contracts—See Annuity contracts, above
Exemption of proceeds from process
annuity contract proceeds, 40-3737
disability insurance proceeds, 40-3736
life insurance proceeds, 40-3734
group life insurance, 40-3735
False information as to terms of policy or condition of insurer, 40-3503 to 40-3505
False statements in applications and claims, penalty, 40-3522
Farm mutual insurers
accumulation of profits prohibited, 40-4839
agents, license not required, 40-4831
annual statement of affairs
contents and filing, 40-4832
exclusive report required, 40-4833
failure to file statement, 40-4833
presentation at annual meeting of members, 40-4822

References are to Title and Section numbers

INSURANCE (Continued)
Farm mutual insurers (Continued)
applications for insurance to be in writing, 40-4843
forms filed with commissioner, 40-4844
articles of incorporation, contents and filing, 40-4808
amendment of articles, 40-4810
approval and endorsement, 40-4809
certified copies as evidence, 40-4811
assessment plan insurance, 40-4806
assessments against members
suit for collection, 40-4850
time payable, 40-4849
bylaws
adoption, amendment and revocation, 40-4817
binding effect on members, 40-4819
contents, 40-4818
cancellation of insurance, 40-4826
cash premium plan, collection of premiums, 40-4806
certificate of authority required, issuance and renewal, 40-4816
churches, insurance on, 40-4846
claims for losses
action against insurer for collection, 40-4852
apportionment of payments when funds insufficient, 40-4851
arbitration by committee of reference, 40-4848
directors' and officers' liability for failure to pay, 40-4850
notice of loss, 40-4847
time of payment, 40-4849
commencement of corporate existence, 40-4809
community houses, insurance on, 40-4846
corporate powers in general, 40-4812
"county" insurer defined, 40-4802
declaration of intent to incorporate, filing, 40-4808
directors
election, qualification and term of office, 40-4828
general management of affairs of insurer, 40-4827
quorum, 40-4827
discriminatory rates prohibited, 40-4845
dividends, payments prohibited, 40-4839
educational purposes, expenditures of funds for, 40-4836
exemption from general provisions of code, 40-2610
fees payable, 40-4842
forms filed with commissioner, 40-4844
incorporators, number and property ownership required, 40-4807
investigation of affairs by commissioner, expenses, 40-4834
investment of funds authorized, 40-4835
laws applicable, 40-4801, 40-4853
maximum amount of insurance on single risk, 40-4804
meetings of members
annual statements, presentation at meeting, 40-4822
notice of adjourned annual meetings, 40-4823
place of meetings, 40-4821
membership
insurance of property required for membership, 40-4820
liability of members, limitations, 40-4825
minimum number of members required, 40-4820
proxies, 40-4824
voting rights of members, 40-4824
withdrawal of member, 40-4826
minimum amount of insurance applied for before commencement of business, 40-4813
officers
bonds of treasurer and secretary, 40-4830
election and terms of office, 40-4829
property insurable by farm mutual, 40-4803

INSURANCE (Continued)
Farm mutual insurers (Continued)
public buildings, insurance on, 40-4846
rates, filing with commissioner not required, 40-4845
records, maintenance and availability, 40-4841
reinsurance, 40-4805
reserves required on cash premium plan, 40-4838
safety fund, creation and use, 40-4837
school buildings, insurance on, 40-4846
scope of chapter, 40-4801
"state" insurer defined, 40-4802
surplus funds required, 40-4815
deficiency, correction required, 40-4840
definition of "surplus," 40-4814
taxes payable, 40-4842
Fictitious groupings for preferred premiums prohibited, 40-3520
Fine, imposition by commissioner, 40-2709
Fire insurance on home, notice required before cancellation or nonrenewal, 40-4415
violation punishable under general penalty clause, 40-4416
Fire prevention advisory commission, appointment by commissioner, 82-1201
Fraternal benefit societies
agents
applications for agent's license, 40-5346
compensation not allowed to agents of exempt society, 40-5305
definition of "insurance agent," 40-5344
expiration of licenses, 40-5347
license required, 40-5345
part-time agents exempt from license requirements, 40-5344
qualifications for agent's license, 40-5346
refusal to issue or renew license, grounds, 40-5346
renewal of licenses, 40-5347
revocation of license, 40-5349
salaried persons exempt from licensed requirements, 40-5344
suspension of license, 40-5349
termination of appointment, notice to commissioner, 40-5348
alien societies, admission to transact business in state, 40-5307
suspension, revocation or refusal of license, grounds and procedure, 40-5308
annual statement of affairs, form, filing and publication, 40-5337
penalty for failure to comply, 40-5339
articles of incorporation
amendments, procedure and filing, 40-5317
changes, binding effect on members, 40-5329
contents, 40-5309
failure to complete organization, articles void, 40-5311
filing with commissioner, 40-5310
attachment of benefits prohibited, 40-5327
beneficiaries of certificate, designation and change, 40-5326
bond for return of advance payments if organization not completed, 40-5310
cash surrender values, computation, 40-5325
certificate of authority, issuance and effect, 40-5313
certificate of benefits required, 40-5329
changes to articles, constitution or laws, binding effect on members, 40-5329
form to be filed with commissioner, 40-5330
prohibited provisions, 40-5331
standard provisions required, 40-5330
commissions to be paid only to agents or exempt persons, 40-5345
consolidation of societies, 40-5353
effect of consolidation, 40-5354
constitution and laws
amendments, procedure and filing, 40-5317
changes, binding effect on members, 40-5329
power to adopt and amend, 40-5314
waiver, authority to prohibit, 40-5318
definition, 40-5301

References are to Title and Section numbers

INSURANCE (Continued)
Fraternal benefit societies (Continued)
disability insurance, filing and approval of certificates, 40-5333
discrimination in rates or benefits prohibited, 40-5351
examinations by commissioner
domestic societies, 40-5340
foreign and alien societies, 40-5341
publication of reports deferred until after notice to society, 40-5342
exemption from general provisions of code, 40-2610
exemption from process of benefits, 40-5327
exempt societies, 40-5305
false and misleading statements, penalties and forfeitures, 40-5350
family coverage authorized, 40-5323
foreign society, admission to transact business in state, 40-5307
suspension, revocation or refusal of license, grounds and procedure, 40-5308
forfeiture for failure to pay loan, restrictions on provisions, 40-5331
funds, purposes for which used, 40-5335
authorized investments, 40-5336
funeral benefits, maximum amount, 40-5326
funeral homes, operation by societies prohibited, 40-5320
garnishment of benefits prohibited, 40-5327
impairment of reserves, assessments against members, 40-5322
incorporators, number required and qualifications, 40-5309
initial solicitations, 40-5312
injunction from doing business, 40-5356
exclusive power of attorney general and commissioner, 40-5357
institutions, maintenance by societies authorized, 40-5320
investment of funds, 40-5336
laws applicable, 40-5304, 40-5359
license to transact business, annual expiration and renewal, 40-5306
limitation of actions on certificate, minimum period, 40-5331
liquidation of society, action for, 40-5356
loans on certificates, authority and computation of value, 40-5325
"lodge system" defined, 40-5302
meetings of members, place of holding, 40-5319
membership, qualification for, 40-5321
merger of societies, 40-5353
effect of merger, 40-5354
minors, admission to membership, 40-5321
insurance authorized without membership, 40-5324
misrepresentation, penalties and forfeitures, 40-5350
nonforfeiture benefits, authority and computation, 40-5325
personal liability for benefits, officers and members exempt, 40-5328
pre-existing societies
incorporation of associations required, 40-5316
powers retained by incorporated society, 40-5315
preliminary certificate of authority
issuance of certificate, 40-5310
period during which valid, 40-5311
solicitation under preliminary certificate, 40-5312
"premiums" defined, 40-5332
principal office of society, location, 40-5319
rebates prohibited, 40-5351
receivership proceedings, 40-5356
records of proceedings to be in English language, 40-5319
reinsurance agreements, 40-5334
"representative form of government" defined, 40-5303
reserves required, computation, 40-5338
retroactive certificates, maximum period, 40-5331
review of actions of commissioner, 40-5358
service of process on society through commissioner, 40-5352
social members without voice in insurance affairs, 40-5321
tax exemption, 40-5343
time allowed for completing organization, 40-5311

INSURANCE (Continued)
Fraternal benefit societies (Continued)
types of benefits authorized to be provided by societies, 40-5323
valuation of certificates, computation and filing, 40-5338
voluntary discontinuation of business, procedure, 40-5356
waiver of constitution and laws, provision prohibiting, 40-5318
Gaming policies void, 40-3709
Group insurance certificates, assignment, 40-3729
Guaranteed arrest bond certificates, 95-1121 to 95-1123
Guaranty association created, 40-5706
assessments against insurers, 40-5708
failure to pay assessments, action by commissioner, 40-5710
rates and premiums increased to cover assessments, 40-5716
borrowing power of association, 40-5708
citation of act, 40-5701
commissioner's powers and duties in general, 40-5710
default judgment against insolvent insurer, reopening, 40-5718
definition of terms, 40-5705
directors of association, selection and reimbursement, 40-5707
employment of personnel, 40-5708
examination of affairs of association, 40-5714
immunity of association from liability, 40-5717
interstate association, delegation of powers to, 40-5709
investigation and adjustment of claims against association, 40-5708
judicial review of commissioner's actions, 40-5710
kinds of insurance covered by act, 40-5703
liberal construction of act, 40-5704
membership in association, 40-5705, 40-5706
notice to directors of insolvency of insurer, 40-5710
notice to insureds of insolvent insurer, 40-5708, 40-5710
obligation of association on claims against insolvent insurer, 40-5708
plan of operation, contents, approval and compliance, 40-5709
powers of association in general, 40-5708
premiums to include allowance for association assessments, 40-5716
prevention of insolvency, steps taken for, 40-5713
primary and excess coverage when insurer insolvent, 40-5712
purpose of act, 40-5702
refund of surplus to member insurers, 40-5708
servicing facility, designation and reimbursement, 40-5708
revocation of designation, 40-5710
stay of proceedings against insolvent insurer, 40-5718
subrogation of association on claims paid, 40-5711
tax exemption of association, 40-5715
Hail insurance, 82-1501 to 82-1520—See HAIL INSURANCE, STATE
Health insurance for persons over 65
agents authorized to write insurance, 40-5404
association to provide insurance
corporate powers of association, 40-5405
definition, 40-5402
examination of books and records of association, 40-5405
filing by association with commissioner, 40-5407
name of association not to be deceptive, 40-5407
policy issued to association, 40-5403
reports by association to commissioner, 40-5406
service of process on association, 40-5405
cancellation prohibited except for nonpayment of premiums, 40-5403
definition of terms, 40-5402
disapproval of forms by commissioner, 40-5406
eligibility of all persons over 65 for coverage, 40-5403
exemption from provisions of other laws, 40-5408
Federal insurance program, adjustment of benefits and premiums to, 40-5406
forms of policies, applications and certificates to be approved by commissioner, 40-5406
joint underwriting and administration permitted, 40-5403

INSURANCE (Continued)
Health insurance for persons over 65 (Continued)
promotional material not to be deceptive, 40-5407
purpose of act, 40-5401
rate regulation by commissioner, 40-5406
reduction of benefits if other benefits recoverable, 40-5403
Health insurance for state employee groups, 40-3905.1
Health service corporations, exemption from insurance code, 40-2611
Holding companies
annual report of insurer controlled by holding company, 40-5505
appeals from commissioner to district court, 40-5521
confidential nature of information received by commissioner, 40-5515
conflicting laws superseded, 40-5522
definition of terms, 40-5502, 40-5509
dividends and distributions, restrictions on, 40-5513
examination of affairs of insurers and holding companies, 40-5505, 40-5514
injunction to prevent violations, 40-5517
judicial review of proceedings, 40-5521
mandamus issued by district court to commissioner, 40-5521
penalties for violations, 40-5507, 40-5518
false information, penalty for filing, 40-5508
prosecution of violations, 40-5518
receivership to protect domestic insurer, 40-5519
registration required of members of holding company system, 40-5512
revocation, suspension or nonrenewal of insurer's license, 40-5520
rules and regulations, 40-5516
sequestration of voting securities, 40-5517
short title of 1967 act, 40-5501
subsidiaries, oganization, acquisition and investment in, 40-5510
surplus, determination of adequacy, 40-5513
tender offers to acquire control of company, filing with and approval by commissioner required, 40-5511
transactions between affiliates, standards of fairness and disclosure, 40-5513
transfers of stock, restrictions on, 40-5503
exemptions from prohibitions, 40-5504
petition for approval by commissioner, 40-5506
voting of securities, restrictions on, 40-5517
Injunction of unfair and deceptive practices, 40-3515
Installment sales act, provisions concerning obtaining of insurance by buyer, 74-607
Insurable interest
personal insurance, 40-3704
property insurance, 40-3705
stipulations for payment of loss without regard to insurable interest void, 40-3709
Insurers
additional types of insurance, qualification of mutuals to write, 40-4713
affiliations unreliable, denial of authority to transact insurance, 40-2810
agreements not to sell property prohibited, 40-4727
alien insurers
definition of term, 40-2606
trust agreements for deposits of assets
amendment of agreement, 40-5207
authority of insurer to make agreement, 40-5206
Canadian insurers, officers in lieu of manager, 40-5215
continuation of existing trust under previous instruments, 40-5203
examination of assets by commissioner, 40-5212
filing and approval of agreement, 40-5205
form and contents of agreement, 40-5205
period during which deposit maintained, 40-5204
purpose of deposits, 40-5204
required deposits, amount, 40-5202
scope of chapter, 40-5201
separation and record of assets, 40-5210
statement of trustee as to character and amounts of asset, 40-5211
substitute trustee, 40-5214

INSURANCE (Continued)
Insurers (Continued)
alien insurers (Continued)
trust agreements for deposits of assets (Continued)
title to trusteed assets, 40-5209
withdrawal of assets by insurer, 40-5213
withdrawal of commissioner's approval, 40-5208
amount of insurance required for formation of mutual, 40-4708
annual statement filed with commissioner, 40-2820
false statements, penalty, 40-2820
applications for mutual insurance to take effect on issuance of certificate of authority, 40-4710
articles of incorporation
amendment of articles, 40-4707
contents required, 40-4705
filing and approval, 40-4706
assets and liabilities
allowable assets in determining financial condition, 40-3001
bonds, valuation, 40-3013
deduction of assets from liabilities and liabilities from assets, 40-3002
domestic insurer's assets to be kept in state, 40-4725
excluded assets in determination of financial condition, 40-3003
liabilities considered in determining financial condition, 40-3004
purchase money mortgages, valuation, 40-3016
real estate valuation, 40-3015
reserves for unearned premiums, 40-3005 to 40-3012—See Reserve for unearned premiums, below
securities other than bonds, valuation, 40-3014
tangible personal property, valuation, 40-3015
"authorized" insurers defined, 40-2607
benevolent associations, 40-4901 to 40-4917—See Benevolent associations, above
bonding of officers of mutual insurer, 40-4722
bond or deposit required of mutual insurers, 40-4709
borrowed surplus, 40-4738
bulk reinsurance, 40-4747
mutual insurers, 40-4748
buying and selling of votes by proxy prohibited, 40-4719
bylaws
modification or revocation of bylaws of stock insurer, 40-4716
mutual insurers, adoption, contents and filing, 40-4715
capital funds required, 40-2807
mutual insurers, 40-4708
certificate of authority required, 40-2801
application for certificate, contents and filing, 40-2811
exceptions, 40-2802
existing certificates, expiration and renewal, 40-2612
expiration, renewal and reinstatement of certificate, 40-2813
fees payable to commissioner, 40-2726
issuance and ownership of certificate, 40-2812
refusal of certificate, 40-2812
revocation or suspension of certificate
discretionary grounds, 40-2815
duration of suspension, 40-2817
mandatory grounds, 40-2814
notice of revocation or suspension, 40-2816
reinstatement of suspended certificate, 40-2817
certificate of incorporation, issuance and effect, 40-4706
combinations of insuring powers, 40-2806
consolidation with other corporations, 40-4745
mutual insurers, 40-4746
contingent liability of mutual members, 40-4729
assessment, levy by directors, 40-4730
enforcement of liability, 40-4731
nonassessable policies, issuance, 40-4732
revocation of authority for issuance, 40-4733

INSURANCE (Continued)
Insurers (Continued)
conversion of mutual to stock insurer, 40-4744
conversion of stock insurer to mutual, 40-4743
corporation statutes of state, application to insurers, 40-4704
corrupt practices with respect to meetings of stockholders or members, 40-4719
defamatory statements, 40-3507
deficits in capital or assets to be made good, 40-4739
assessment of stockholders or members, 40-4740
directors' liability for losses during deficit, 40-4741
transfer of stock during impairment does not release liability, 40-4742
definition of "insurer," 40-2603
deposits of initial premiums received by mutual insurer, 40-4711
deposits through commissioner—See Deposits through commissioner, above
directors, number, term and election, 40-4720
participation of policyholders in election, 40-4721
dividends, funds from which payable, 40-4735
mutual insurers, 40-4736
penalties for unlawful dividends, 40-4737
"domestic" insurer defined, 40-2606
eligibility for certificate of authority, 40-2804
examinations by commissioner, 40-2713
conduct of examination, 40-2715
destruction of books to hinder examination, penalty, 40-2716
expenses of examination, 40-2717
managers and promoters, 40-2714
reports on examinations, 40-2716
exclusive agency contracts subject to commissioner's approval, 40-4724
existing domestic insurers continue corporate existence, 40-2614
extinguishment of charters, 40-4750
failure of mutual to qualify for certificate, return of premiums, 40-4712
false financial statements, 40-3506
farm mutual insurers, 40-4801 to 40-4853—See Farm mutual insurers, above
foreign insurers
definition of "foreign" and "alien" insurers, 40-2606
investments permitted, 40-3134
retaliatory tax provisions, 40-2826
"state" defined, 40-2606
fraternal benefit societies, 40-5301 to 40-5359—See Fraternal benefit societies, above
funeral directors, prohibited relations with, 40-3521
governmentally owned insurers prohibited, 40-2804
home office of domestic insurer, 40-4725
impairment of capital or assets, deficiency to be made good, 40-4739
assessment of stockholders or members, 40-4740
directors' liability for losses during deficiency, 40-4741
transfer of stock during impairment does not release liability, 40-4742
incorporators, number required, 40-4705
insider trading in securities, monthly statement to be filed with commissioner of insurance, 40-4751
arbitrage transactions exempt from restrictions, 40-4755
brokers, when exempt from restrictions, 40-4754
closely-held securities exempt from restrictions, 40-4757
delivery of securities sold, when required, 40-4753
market specialists, when exempt from restrictions, 40-4754
profits from security transactions accruing to company, 40-4752
registered securities exempt from restrictions, 40-4757
rules and regulations of commissioner, 40-4758
securities subject to restrictions, 40-4756
short sales by insiders prohibited, 40-4753
interlocking ownership and management, when permitted, 40-3517
investment advice exempt from securities act, 15-2004
investments
abstract plant and equipment, acquisition by title insurer, 40-3132
amount of investment limited, date of determination of insurer's funds, 40-3102

INSURANCE (Continued)
Insurers (Continued)
investments (Continued)
authorization by directors or investment committee required, 40-3104
building and loan shares and savings account, 40-3123
Canadian governmentally guaranteed loans, 40-3107
Canadian government direct obligations, 40-3106
certificate of authority not required, 40-2803
chattel mortgages, 40-3127
collateral loans, 40-3122
controlling interest in corporation, acquisition prohibited, 40-3133
corporate securities
bonds and debentures, 40-3114
common stock, 40-3116
insurance stock, 40-3117
maximum amount invested, 40-3105
preferred or guaranteed stock, 40-3115
subsidiary stocks, 40-3118
date of determination of eligibility, 40-3102
director, officer or controlling stockholder of insurer, loans to prohibited, 40-3133
disposal of unauthorized investments, time allowed
failure to dispose of property, effect, 40-3131
personal property and securities, 40-3130
real estate, 40-3129
unlawfully acquired property, 40-3131
diversification of investments required, 40-3105
equipment trust certificates, 40-3119
maximum amount invested, 40-3105
federal agency obligations, 40-3112
federal direct obligations, 40-3106
federally guaranteed loans, 40-3107
foreign insurers, investments permitted, 40-3134
foreign investments, 40-3124
improvement district obligations, 40-3110
maximum amount invested, 40-3105
income-bearing quality required, 40-3103
international bank obligations, 40-3113
investment trust securities, 40-3120
maximum amount invested, 40-3105
irrigation district obligations, 40-3111
market value, purchase price restricted to, 40-3103
miscellaneous investments not otherwise prohibited, 40-3125
own capital stock, investment in or loans on prohibited, 40-3133
policy loans, 40-3121
previously held investments, eligibility, 40-3102
real estate, 40-3128
real estate mortgages, 40-3126
scope of chapter, 40-3101
state, county and municipal obligations, 40-3108
revenue bonds, 40-3109
underwriting prohibited, 40-3133
liquidation of assets and liabilities, certificate of authority not required, 40-2802
loans to officers, directors and employees prohibited, 40-4723
management contracts subject to commissioner's approval, 40-4724
management unreliable, denial of authority to transact insurance, 40-2810
maximum amount insured on one risk, 40-2909
meetings of stockholders or members, 40-4717
membership in mutual insurers, 40-4714
merger with other corporations, 40-4745
mutual insurers, 40-4746
"mutual" insurer defined, 40-4703
names of insurers, prevention of confusing similarity, 40-2805

INSURANCE (Continued)
Insurers (Continued)
participating policies, authority for issuance, 40-4734
pecuniary interest of officers, directors and employees, restrictions, 40-4723
"person" defined, 40-2604
political contributions prohibited, penalty, 40-3518
principal place of business of domestic insurers, 40-4725
proxies of stockholders, revocability, 40-4718
reciprocal enforcement against domestic insurers of unauthorized insurer laws of other states, 40-4728
reciprocal insurance, 40-5001 to 40-5028—See Reciprocal insurers, below
records of domestic insurer to be kept in state, 40-4725
rehabilitation and liquidation
appeals to supreme court in delinquency proceedings, 40-5102
assessments against members or subscribers
judgment for assessment, 40-5133
levy of assessment, 40-5132
notice of assessment, 40-5133
order for payment of assessments, 40-5133
order of assessments, 40-5132
petition for assessment, 40-5131
presumption that assessment is correct, 40-5133
attachment of assets during proceedings prohibited, 40-5120
borrowing power of commissioner, 40-5124
claims against insurers
contents of claim, 40-5118
contingent and unliquidated claims, 40-5129
employees' claims, priority, 40-5127
filing of claim, 40-5118
hearing and order on claims filed, 40-5118
judgments, restrictions on effect as evidence, 40-5129
nonresident claims against domestic insurers, 40-5116
offset of debts and credits, 40-5128
preferred claims, 40-5119
priority of claims, 40-5119
report and notice of claims filed, 40-5118
resident claims against foreign insurer, 40-5117
secured claimant, maximum value allowed, 40-5129
time for filing, 40-5130
commencement of delinquency proceedings, 40-5103
definition of terms, 40-5101
deposit of moneys collected by commissioner, 40-5122
employees' claims, priority, 40-5127
exclusiveness of delinquency proceedings as method, 40-5102
execution against assets during proceedings prohibited, 40-5120
fees for filing and recording of papers, exemption of commissioner, 40-5123
garnishment of assets during proceedings prohibited, 40-5120
grounds for conservation of foreign insurer, 40-5107
alien insurers, 40-5108
grounds for liquidation, 40-5106
ancillary liquidation of foreign insurer, 40-5109
grounds for rehabilitation of domestic insurers, 40-5105
injunctions on application of commissioner, 40-5104
jurisdiction of delinquency proceedings, 40-5102
liens voidable, 40-5126
mutual insurer, distribution of assets on liquidation, 40-4749
order of conservation of foreign or alien insurer, 40-5113
order of liquidation, 40-5111
alien insurer, 40-5112
ancillary liquidation of foreign insurer, 40-5113
order of rehabilitation or termination of rehabilitation, 40-5110
receivership, appointment and proceedings by commissioner, 40-5113
alien insurers, 40-5114
foreign insurers, 40-5115

INSURANCE (Continued)
Insurers (Continued)
rehabilitation and liquidation (Continued)
report of commissioner to court, 40-5131
time of determination of rights on liquidation, 40-5125
transfers void, 40-5126
uniform insurers liquidation act, sections comprising, interpretation and construction, 40-5121
venue of delinquency proceedings, 40-5102
scope of chapter on organization and corporate procedures, 40-4701
service of process through commissioner, 40-2818
proceedings after service, 40-2819
"stock" insurer defined, 40-4702
surplus requirements, 40-2808
time allowed for mutual insurer to qualify, 40-4712
unauthorized insurers
actions by unauthorized insurers prohibited, 40-3402
aiding unauthorized insurers prohibited, felony, 40-3401
definition of term, 40-2607
representation of unauthorized insurer prohibited, felony, 40-3401
service of process on insurers
attorney's fees, when allowed in judgment, 40-3408
citation of act, 40-3403
commissioner as agent, 40-3404
defense of action, 40-3407
exemptions from service of process provisions, 40-3406
judgment, when allowed, 40-3405
motion to quash or set aside service, 40-3407
procedure for service, 40-3405
uniformity of interpretation, 40-3403
unused corporate charters, extinguishment, 40-4750
vouchers for disbursement of funds, 40-4726
Joint owners, transfer of interest by one does not avoid insurance, 40-3708
Lender favoring agent or insurer, prohibition, 40-3516
Liability insurance
architects on public projects to carry insurance, 66-114
horse racing licensees required to carry insurance, 62-510
malpractice insurance, restrictions on cancellation or increase of premiums, 40-4413, 40-4414
motor vehicle insurance, restrictions on cancellation or nonrenewal, 40-4405 to 40-4412—See Motor vehicle liability insurance, below
sheriff provided liability insurance by county, 16-2725
sovereign immunity defense to be waived, 40-4401, 40-4402
Life insurance
agents—See also Agents and solicitors, above
disability insurance, authority of agent to write, 40-3303
practices prohibited to unlicensed persons, 40-3303
beneficiaries of industrial policies, provisions as to change, 40-3815
benefits arising out of debt of another policyholder prohibited, 40-3833
cash surrender values, provisions as to table of values to be included, 40-3810
claims for benefits, payment, 40-3814
credit life insurance—See Credit life and disability insurance, above
deduction of unpaid premiums and loan from policy proceeds, 40-3830
definition, 40-2902
dividends payable to policyholder, provision as to, 40-3808
entire contract to be contained in policy, 40-3806
excess risk, placement by agent with insurer other than that as to which licensed, 40-3326
grace period required, 40-3804
group life insurance
application as part of policy, 40-3913
certificates for individual insured persons, 40-3917
conversion rights
death of insured pending conversion, 40-3920
notice as to conversion rights, 40-3921

INSURANCE (Continued)
Life insurance (Continued)
group life insurance (Continued)
conversion rights (Continued)
termination of eligibility of individual, 40-3918
termination of policy or coverage, 40-3919
credit union groups, requirements, 40-3907
debtor groups, requirements, 40-3906
dependents' coverage, 40-3909
employee groups defined, 40-3902
"employee life insurance" defined, 40-3922
established group required, 40-3901
grace period for payment of premiums, 40-3911
incontestability provision required, 40-3912
labor union groups, requirements, 40-3903
maximum coverage for one person, 40-3908
misstatement of age, provision for adjustment of premiums or benefits, 40-3915
nonforfeiture provisions required, 40-3910
payment of benefits, provisions as to, 40-3916
proof of insurability, provisions as to requiring, 40-3914
public employee groups, requirements, 40-3905
required provisions in group contracts, 40-3910
state employee groups, provision for, 40-3905.1
trustee groups, requirements, 40-3904
violations of chapter, penalty, 40-3923
guaranteed installment payments, table of amounts to be included, 40-3811
incontestability provision required, 40-3805
contest as to validity or restriction or exclusion not precluded, 40-3817
"industrial life insurance" defined, 40-3802
nonforfeiture provisions, 40-3831
lapse or termination of other policy, benefits arising from prohibited, 40-3833
loan value of policy, provisions as to, 40-3809
table of values to be included, 40-3810
minors, power to contract for insurance, 40-3710
misstatement of age, provision as to adjustment of benefits, 40-3807
nonforfeiture benefits, 40-3831
old policies, 40-3832
table of values to be included, 40-3810
participating policies, provision as to dividends payable, 40-3808
premium payment provision to be included, 40-3813
prohibited provisions, 40-3826
industrial life insurance, 40-3827
reinstatement provisions to be included, 40-3812
contestability and exclusions after reinstatement same as for original policy, 40-3828
rejected risk, placement by agent with insurer other than that as to which licensed, 40-3326
reserve for unearned premiums, 40-3008
amount of reserve required, 40-3011
deposit of reserves, 40-3012
retention of policy proceeds by insurer under agreement, 40-3829
scope of chapter, 40-3801
single premium policies, inapplicable provisions omitted, 40-3803
standard provisions required, 40-3803
standard valuation law, 40-3011
term policies, inapplicable provisions omitted, 40-3803
title required on policies, 40-3816
types of insurance forbidden to life insurers, 40-2806
unclaimed funds when presumed abandoned, 67-2203—See PROPERTY, Unclaimed property
valuation of policies for determination of reserves, 40-3011
Malpractice insurance, cancellation or increase in premiums
notice required before cancellation or increase, 40-4414
unfounded claim does not furnish basis for cancellation or increase, 40-4413

INSURANCE (Continued)
Marine insurance
definition, 40-2907
reserve for unearned premiums, 40-3006
Maximum amount insured on one risk by one insurer, 40-2909
Medical insurance, continued coverage of handicapped children in adulthood
group contracts, 40-3739, 40-3740
individual contracts, 40-3738, 40-3740
Minors, gift of policy to, 67-1801 et seq.
Minors, power to contract for life and disability insurance, 40-3710
Misrepresentation of terms of policy or condition of insurer, 40-3503 to 40-3505
Monopolistic practices prohibited, 40-3508
Motor vehicle liability insurance, cancellation or nonrenewal
grounds for cancellation, 40-4407
statement of grounds to be furnished insured on request, 40-4406
immunity of insurer for statements giving grounds for cancellation or renewal, 40-4412
notice to insured required before cancellation, 40-4405, 40-4408
penalty for violation, 40-4411
notice to insured required before nonrenewal of policy, 40-4409
proof of notice by proof of mailing, 40-4410
Named insured, restriction of property insurance to interest of, 40-3706
Partnership, transfer of interest by partner does not avoid insurance, 40-3708
Payment discharges insurer, 40-3730
minor may give acquittance, 40-3731
Penalty for violations, 40-2617
Policies
additional provisions permitted to be included, 40-3719
annuity contracts—See Annuity contracts, above
assignment of policies, 40-3729
exclusion from chapter on secured transactions, 87A-9-104
binders for temporary insurance, 40-3726
bylaws of insurer, incorporation by reference prohibited, 40-3720
charter of insurer, incorporation by reference prohibited, 40-3720
combination policies, issuance by two or more insurers, 40-3722
construction of entire policy, 40-3725
contents of policy in general, 40-3718
countersignature by agent required, 40-2822
commission of resident agent on policy originating outside state, 40-2824
issuance of policy at home or branch office, 40-2825
salaried personnel prohibited from countersigning, 40-2823
definition of term, 40-3702
delivery of policy, 40-3727
disability insurance—See Disability insurance, above
duplicate policy issued to holder of security interest, 40-3727
entire contract contained in policy, 40-3717
execution of policies, 40-3721
exemption from securities act, 15-2004, 15-2013
existing forms remaining in effect, 40-2613
extension by certificate, 40-3728
form, approval required, 40-3714
grounds for disapproval, 40-3715
identifying characters on policy forms, 40-3718
life insurance policies, 40-3803 to 40-3833—See Life insurance, above
loans on policies authorized, 40-3121
named insured, restriction of insurance to interest of, 40-3706
noncomplying provisions, construction as if in compliance, 40-3724
pledge of policies, 40-3729
renewal by certificates, 40-3728
scope of chapter, 40-3701
security interest in policies excluded from Uniform Commercial Code, 87A-9-104
signature of policies, 40-3721
standard provisions required, when omissions and substitutions permitted, 40-3716

INSURANCE (Continued)
Policies (Continued)
underwriters' policies, joint issuance, 40-3722
valued policy law applicable to real estate improvements, 40-4302
Power of persons to contract for insurance, 40-3710
Preferred rate plans to be approved by commissioner, 40-3520
"Premium" defined, 40-3703
Premiums, collection when not due prohibited, 40-3519
Professional liability insurance, cancellation or increase of premiums
notice required before cancellation or increase, 40-4414
unfounded claim does not furnish basis for cancellation or increase, 40-4413
Property insurance
definition, 40-2904
measure of indemnity, 40-4301
reserve for unearned premiums, 40-3005
unfair discrimination prohibited, 40-3512
valued policy law applicable to real estate improvements, 40-4302
Public grain warehousemen, insurance coverage required, 3-228.6
Rates and rating organizations
administration and enforcement of chapter, 40-3668
advisory organizations, 40-3652
records and examination, 40-3655
casualty insurance, apportionment of, 40-3645
commissioner's examinations, 40-3655 to 40-3658
concerted action by insurers, 40-3641
admitted insurers with common ownership or management, 40-3642
cosurety bonds, 40-3642
definitions, 40-3635 to 40-3638
dividends and return of savings or unabsorbed premium deposits not regulated by chapter, 40-3666
exchange of information and experience data, 40-3644
existing filings remaining in effect, 40-2613
information affecting rates not to be withheld, 40-3665
joint underwriters and reinsurers, 40-3646
joint underwriting and reinsurance groups, filings by, 40-3653
records and examination, 40-3654, 40-3655
loss and expense experience, recording and reporting of, 40-3669
noncompliance of rates, 40-3660
disciplinary action, 40-3662 to 40-3665
hearings, 40-3661
organizations
license, 40-3647 to 40-3649
membership rules, 40-3650, 40-3651
records and examination, 40-3655
subscribers' use of rates, systems, rules or forms, 40-3643
other laws not violated by conduct authorized by chapter, 40-3667
purpose of chapter, 40-3634
review of rates, 40-3659
scope of chapter, 40-3639
standards for rate-making, 40-3640
supplementation or modification of chapter, 40-3668
Rebates prohibited
life and disability insurance, 40-3510
exceptions, 40-3511
property, casualty and surety insurance, 40-3512
Reciprocal insurers
actions by and against insurers, 40-5005
advance of funds to insurer, limitations on retainment, 40-5015
annual statement of insurer, filing, 40-5014
assessments against subscribers
aggregate liability, maximum in one year, 40-5023
authority for levy, 40-5021
computation of amounts, 40-5021
time limit for levy of assessment, 40-5022

INSURANCE (Continued)
Reciprocal insurers (Continued)
assets and liabilities considered in determining financial condition, 40-5016
attorney-in-fact
action on attorney's bond, 40-5013
bond of attorney, 40-5012
definition, 40-5006
foreign attorney not doing business by representing authorized insurer, 40-5006
powers of attorney, 40-5010
modifications of power, 40-5011
certificate of authority, issuance, suspension or revocation, 40-5009
conversion into stock or mutual insurer, 40-5027
declaration by attorney-in-fact, content and filing, 40-5008
definition, 40-5001, 40-5002
existing insurers, compliance with chapter required, 40-5003
foreign insurers, application of chapter to, 40-5003
impairment of surplus, deficiency to be made up, 40-5028
insuring powers of reciprocal, 40-5004
life insurance by reciprocal arrangement prohibited, 40-2806
liquidation, distribution of assets to subscribers, 40-5026
merger of insurers, 40-5027
modifications of subscribers' agreement or power of attorney, 40-5011
name of insurer, 40-5005
nonassessable policies, issuance, 40-5024
organization of insurer, 40-5008
reinsurance authorized, 40-5004
savings, distribution to subscribers, 40-5025
subscribers
advisory committee representing subscribers, selection and powers, 40-5018
eligibility to become subscriber, 40-5017
fiduciaries of subscribers not personally liable, 40-5017
judgment against insurer required for direct liability, 40-5020
liability of subscribers, 40-5019
surplus funds required, 40-5007
Reinsurance authorized, 40-2910
certificate of authority not required, 40-2802
original insured has no interest, 40-3723
state hail insurance, 82-1505
Reserve for unearned premiums
casualty insurance, 40-3005
disability insurance, 40-3007
increase of inadequate reserves, 40-3009
liability insurance, 40-3008
life insurance, 40-3011
deposit of reserves, 40-3012
marine insurance, 40-3006
property insurance, 40-3005
surety insurance, 40-3005
title insurance, 40-3010
workmen's compensation insurance, 40-3008
Retaliatory tax provisions, 40-2826
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Saving clause as to rights and liabilities accrued, 40-2615
Securities of insurance companies, insider trading in, 40-4751 to 40-4758—See Insurers, insider trading in securities, above
Solicitation of business defined as transaction of insurance, 40-2608
Sovereign immunity defense waived by insurers, 40-4401, 40-4402
Special provisions in code prevail over general, 40-2616
State buildings, deposit and use of insurance proceeds for damage, 78-1101
State insurance plan for tort claims against governmental entities, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims against governmental entities
Stock offer as inducement to insurance prohibited, 40-3513

References are to Title and Section numbers

INSURANCE (Continued)
Surety insurance
definition, 40-2906
official bonds, power of insurers to rights, 40-4502
powers of surety insurers generally, 40-4501
release of corporate insurers from liability, 40-4503
reserve for unearned premiums, 40-3005
unfair discrimination prohibited, 40-3512
Surplus line insurance
affidavit as to prerequisites, 40-3411
agent, license, fee and bond, 40-3414
authority under license, 40-3415
revocation of license, 40-3422
annual statement of agent, contents and filing, 40-3419
certificate of authority not required, 40-2802
certificate or policy of insurance, issuance and contents, 40-3417
endorsement of contract, 40-3412
exemptions from surplus line law, 40-3426
liability of insurer as to losses and unearned premiums, 40-3418
prerequisites to issuance of surplus line insurance, 40-3410
records maintained by agent, 40-3419
rules and regulations prescribed by commissioner, 40-3425
service of process on insurer, 40-3424
short title of act, 40-3409
solvency of insurer, 40-3416
tax on premiums, 40-3420
penalty for failure to file or pay, 40-3421
validity and enforcement of surplus line insurance, 40-3413
Tax on premiums, 40-2821
fire insurance premiums, 82-1231
proceeds paid to relief associations, 11-1919
report of premiums from various cities, 11-1918
independently procured coverage, 40-3427
police department payments from proceeds of tax, 11-1834 to 11-1837—See CITIES AND TOWNS, Police department, state payments
retaliatory tax provisions, 40-2826
surplus line premiums, 40-3420
penalty for failure to file or pay, 40-3421
Title insurance
abstract or legal opinion required as basis for insurance, 40-4601
definition, 40-2908
guaranty fund required, 40-4603
investments in abstracting plant and equipment authorized, 40-4603
mutual title insurers prohibited, 40-2806
rates, filing with commissioner, 40-4602
reserve for unearned premium, 40-3010
Title of Code, 40-2601
Trade practices
false financial statements, penalty, 40-3506
purpose of regulation, 40-3501
"Transact" defined, 40-2608
Types of insurance enumerated, 40-2902 to 40-2908
Unfair competition prohibited, 40-3502
Uninsured motorist coverage added to motor vehicle policies, 40-4403
Unit ownership property, obtaining insurance for, 67-2331
Valued policy law applicable to real estate improvements, 40-4302
Vending machines, license required, 40-3322
Vendor of property favoring agent or insurer, prohibition, 40-3516
Vested rights preserved, 40-2615
Wagering policies void, 40-3709
Workmen's compensation insurance
reserve for unearned premiums, 40-3008
subject to workmen's compensation act, 92-1005

INSURANCE (Continued)
Workmen's compensation insurance premium rates
applicability of act, 40-5602
enforcement of filed rates
higher rates, application for use of, 40-5614
lower rates, 40-5613
uniform percentage changes, permission for, 40-5615
exclusion of certain reciprocal insurers, 40-5603
filings by insurers with commissioner, 40-5607
notice of disapproval, 40-5610, 40-5611
review of filings, 40-5609
standards for approval, 40-5612
suspension or modification of requirements, 40-5608
public welfare, declaration of policy, 40-5601
purpose of act, 40-5601
rates, provisions as to making of, 40-5604
excessive, inadequate or discriminatory rates prohibited, 40-5605
uniformity neither required nor prohibited, 40-5606
rating organization, composition of, 40-5617
committee on operation of organization, 40-5618
membership in required, 40-5616

INTEREST
Consumer loan act—See CONSUMER LOAN ACT
Legal interest rate, 47-124
Usury laws unaffected by Secured Transactions chapter, 87A-9-201

INTERLOCAL CO-OPERATION
Commission, 11-4403 to 11-4414, 11-4416
additional powers and duties, 11-4414
appropriation of funds for expense, 11-4415
comprehensive program, 11-4409
implementation, 11-4410
formulation of proposal, 11-4408, 11-4411
meetings and vacancies, 11-4406, 11-4407
organization, 11-4403 to 11-4405
public hearings, 11-4412
recommendations, procedure for submitting proposals, 11-4413
term, 11-4416
Constitutional authority, 1972 Const., XI, 7
Definitions, 11-4402
Interlocal agreements, terms and conditions, 16-4904
appropriation of funds, 16-4904
approval by attorney general, 16-4904
filing with county clerk and recorder and secretary of state, 16-4904
furnishing of services, 16-4904
Policy and purpose of act, 11-4401
"Public agency" defined, 16-4903
Purpose of act, 16-4901
Short title of act, 16-4902

INTERPLEADER
Bailee under document of title requiring interpleader of conflicting claims, 87A-7-603
Form suggested by rules, M. R. Civ. P., Appendix of Forms, Form 14
Joinder of parties by interpleader, M. R. Civ. P., Rule 22(a)
Substitution of parties by interpleader, M. R. Civ. P., Rule 22(b)

INTERSTATE COMPACTS
Driver license compact, text, 31-163
Juveniles, compact on, text, 10-1001
Library compact, text, 44-601
Mental health compact enacted, text, 80-2412
Motor vehicle equipment safety compact, text, 32-21-166
Western Interstate Corrections Compact, text, 95-2308

References are to Title and Section numbers

INTERVENTION

Constitutional questions, M. R. Civ. P., Rule 24(c)
Permissive intervention, M. R. Civ. P., Rule 24(b)
Procedure, M. R. Civ. P., Rule 24(c)
Right to intervene, M. R. Civ. P., Rule 24(a)

INVASION OF PRIVACY

Constitutional prohibition, 1972 Const., II, 10

INVESTMENTS

Bonds issued for urban renewal projects, 11-3911
Public funds, unified investment program, 1972 Const., VIII, 13; 79-1202
Special improvement district interest and sinking fund moneys, 11-2288

INVESTMENT SECURITIES

See also SECURITIES REGISTRATION, 15-2001 to 15-2025

Agreements as to applicable state law, restrictions on, 87A-1-105
Altered security enforceable according to original terms, 87A-8-206
Assessments, liability of registered owner for, 87A-8-207
Attachment of securities, method of levy, 87A-8-317, 93-4307
Authenticity of third-party documents presumed, 87A-1-202
Bank deposits and collections, extent to which subject to chapter, 87A-4-102
Blanks in security, authority to fill, 87A-8-206
Brokers
- adverse claims to securities held by broker for customer, 87A-8-313
- definition of "broker," 87A-8-303
- fiduciary obligations, not liable for breach by principal, 87A-8-318
- rights of customer in securities held by broker, 87A-8-313
- warranties given by broker in transfer or registration of security, 87A-8-306

Burden of proof as to signatures and defenses in actions on security, 87A-8-105
Call for redemption or exchange, time lapse after call giving notice of defect or defense, 87A-8-203, 87A-8-305
Calls, liability of registered owner for, 87A-8-207
Citation of Uniform Commercial Code chapter, 87A-8-101
Clearing corporations, pledge or transfer of securities by entries on books, 87A-8-320
Commercial Paper chapter inapplicable to securities, 87A-3-103
Conditional delivery ineffective as defense against purchaser for value, 87A-8-202
Conflict of laws on validity of security and rights and duties of issuer, 87A-8-106
Counterfeit securities invalid, 87A-8-202
Course of dealing between parties, application, 87A-1-205
Creditors' remedies to reach security, 87A-8-317
Defective securities, validity in hands of purchaser for value, 87A-8-202
Definition of terms, 87A-8-102
- "bona fide purchaser," 87A-8-302
- "broker," 87A-8-303
- general definitions in Uniform Commercial Code, 87A-1-201
- "issuer," 87A-8-201

Endorsement of security
- blank endorsement, definition, 87A-8-308
- delivery required to complete transfer, 87A-8-309
- delivery to purchaser without endorsement, effect, 87A-8-307
- fiduciary endorsement, effect of want of authority, 87A-8-308
- form of endorsement, 87A-8-308
- guarantee of signature or endorsement, effect, 87A-8-312
- notice to purchaser of adverse claims, form of endorsement constituting, 87A-8-304
- bearer endorsement, 87A-8-310
- partial transfer, endorsement making, 87A-8-308
- persons with power to endorse, 87A-8-308
- special endorsement, definition, 87A-8-308
- unauthorized endorsement, when ineffective against owner, 87A-8-311

Fiduciary transfers
- adverse claims, duties of corporation or agent after notice, 15-656
- agent or bailee not liable for breach by principal, 87A-8-318
- assignment by fiduciary, corporation or agent not bound to inquire, 15-654
- authorized transfers, nonliability of corporation and agent, 15-657

INVESTMENT SECURITIES (Continued)
Fiduciary transfers (Continued)
breach of duty by fiduciary, nonliability of innocent parties, 15-658
citation of act, 15-662
conflict of laws, 15-659
definition of terms, 15-652
evidence required for assignment by fiduciary not registered owner, 15-655
guarantor of signature, restriction on liability, 15-658
registration in name of fiduciary, corporation or agent not bound to inquire, 15-653
short title of act, 15-662
tax obligation unaffected by act, 15-660
territorial application of act, 15-659
uniformity of interpretation, 15-661
Forgery as defense against purchaser for value, 87A-8-202
Fractional interest in rights or property, creator as "issuer," 87A-8-201
Good faith required, 87A-1-203
Guarantor of security, obligation as "issuer," 87A-8-201
Incomplete security, authority to fill, 87A-8-206
Incorporation by reference to other documents and laws, 87A-8-202
Injunction to reach security, 87A-8-317
Judicial process to reach security, 87A-8-317
Levy on security, procedure required, 87A-8-317
Lien of issuer to be noted on security, 87A-8-103
Negotiable nature of securities, 87A-8-105
Nondelivery ineffective as defense against purchaser for value, 87A-8-202
Notice by issuer to registered owner sufficient, 87A-8-207
Notice to purchaser of adverse claims, conditions constituting, 87A-8-304
staleness as notice, 87A-8-305
Overissue of security, effect on provisions validating or compelling issuance of security, 87A-8-104
Pleadings as to signatures and defenses in action on security, 87A-8-105
Pledge of securities by entries on books of clearing corporation, 87A-8-320
Possessory action against security after wrongful transfer, 87A-8-315
References to other documents and laws, effect, 87A-8-202
Registration of security
action by adverse claimant to prevent registration, 87A-8-403
agent for registration, rights and duties, 87A-8-406
assessments, liability of registered owner for, 87A-8-207
assurances required by issuer before registering transfer, 87A-8-402
authenticating trustees, rights and duties, 87A-8-406
bearer endorsement, right of holder to registration under, 87A-8-310
calls, liability of registered owner for, 87A-8-207
delay in registration, liability of issuer for loss resulting from, 87A-8-401
destroyed security, obligations of parties, 87A-8-405
duty of issuer to register transfer, 87A-8-401
exemption of issuer from liability for loss from registration, 87A-8-404
fiduciary obligations, duty of issuer to inquire into, 87A-8-403
inquiry into adverse claims, duty of issuer before registration, 87A-8-403
liability of issuer for loss from registration of transfer, 87A-8-404
lost securities, obligations of parties, 87A-8-405
notice to registered owner by issuer sufficient, 87A-8-207
proof of authority to transfer furnished to purchaser, 87A-8-316
requirements of issuer for registration of transfer, 87A-8-402
stolen securities, obligations of parties, 87A-8-405
transfer agent, rights and duties, 87A-8-406
transfer books, maintenance creating status of "issuer," 87A-8-201
unauthorized endorsement, when ineffective against owner, 87A-8-311
voting rights of registered owner, 87A-8-207
warranties of person presenting security for registration, 87A-8-306
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale of securities
"bona fide purchaser" defined, 87A-8-302
delivery to purchaser, acts constituting, 87A-8-313
exchange or brokers, sale through, 87A-8-314
form of security acceptable, 87A-8-107

INVESTMENT SECURITIES (Continued)
Sale of securities (Continued)
delivery without endorsement, effect, 87A-8-307
notice to purchaser of adverse claims, conditions constituting, 87A-8-304
staleness as notice, 87A-8-305
price, recovery by seller when buyer fails to pay, 87A-8-107
proof of authority to transfer furnished to purchaser, 87A-8-316
rights acquired by purchaser, 87A-8-301
warranties of registrar or transfer agent to purchaser, 87A-8-208
warranties of transferor to purchaser, 87A-8-306
Short title of Uniform Commercial Code chapter, 87A-8-101
Staleness of called or matured security as notice of defect or defense, 87A-8-203
Statute of frauds, 87A-8-319
Street name account, right of owner to securities in, 87A-8-313
Successor issuer, responsibility, 87A-8-201
Time allowed for required actions, 87A-1-204
Transfer of security
clearing corporation entries as means of transfer, 87A-8-320
delivery required for transfer, 87A-8-309
delivery without endorsement, effect, 87A-8-307
form of security acceptable from person obligated to deliver, 87A-8-107
guarantee of signature or endorsement, warranties included, 87A-8-312
notice to purchaser of adverse claims, conditions constituting, 87A-8-304
staleness as notice, 87A-8-305
possessory action after wrongful transfer of security, 87A-8-315
proof of authority to transfer furnished to purchaser, 87A-8-316
registration of transfer, 87A-8-401 to 87A-8-406—See Registration of security, above
restrictions on transfer to be noted on security, 87A-8-204
warranties of registrar or transfer agent to purchaser, 87A-8-208
Unauthorized signature in course of issue, when effective, 87A-8-205
Usage of trade, application, 87A-1-205
Validity of defective security in hands of purchaser for value, 87A-8-202
Voting rights of registered owner, 87A-8-207
Warranties of registrar or transfer agent to purchaser, 87A-8-208
"When issued" contract, cancellation by purchaser on material change in security, 87A-8-202

IONIZING RADIATION
See RADIATION CONTROL, 69-5801 to 69-5816

IRRIGATION DISTRICTS
Bond issues
interest rate, maximum paid, 79-2602
definition of terms, 79-2601
lien of bonds, duration following maturity, 89-1706
signatures on bonds, 89-1705
warrants for payment of interest, 89-1801
Commissioners
compensation of officers and employees of board, 89-1206
organization of appointed commissioners, 89-1206
place of office of commissioners, 89-1206
Contracts with United States, use of excess moneys in contract fund for other obligations of district, 89-1811
Examination of books and records by state examiner, costs, 89-2107
Joint operation
apportionment of costs and expenses, 89-1216
authority for, 89-1209
board of control
bond of member, 89-1210
employment of manager, 89-1214
establishment of office, 89-1213
examination by state examiner, 89-1215

IRRIGATION DISTRICTS (Continued)
Joint operation (Continued)
board of control (Continued)
member at large, 89-1210
members, 89-1210
per diem and expenses, 89-1212
powers and duties, enumeration, 89-1211
records required to be kept, 89-1215
vacancies occurring in, 89-1210
custodian of funds for, 89-1217
election on question, method of holding, 89-1218
existing contracts for joint operation, 89-1218
manager
bond, 89-1210
employment, 89-1214
office, 89-1213
payments from funds, 89-1217
purpose of act, 89-1220
records and papers of, 89-1213
withdrawal from contract for joint operation, 89-1219
Reserve fund, authorized investments, 89-1811
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Special assessments, maximum interest paid, 79-2603
definition of terms, 79-2601
Taxation
annual levy, 89-1804
apportionment by board of commissioners, 89-1803
cancellation of levy to pay indebtedness when bond issued, 89-1804
divided ownership, apportionment of taxes, 89-1804
elevation considered in apportioning assessment, 89-1803
maximum levy per acre, 89-1804
minimum charge, 89-1803
transmission of funds from county to county, 89-1814
uniformity of assessment rate against irrigable lands, 89-1803

J

JAILS
Board of prisoners as county charge, 16-3802
claims for expenses submitted to county commissioners, 16-2818
Common jail for two or more counties authorized, 16-2802.1
cost and expense, agreement among participating counties, 16-2802.1
keeping of jail by agreement of sheriffs, 16-2803
location of jail, 16-2802.1
Diseased prisoners, removal to hospital, 69-4516
Medical and hospital expense, how paid, 16-2818
Prisoners delivered by highway patrol, fee for keeping, 16-2818
Sanitary inspection, 69-4118
Venereal disease, examination and treatment of prisoners for, 69-4606
Work release program for prisoners, 95-2216

JOINT TENANCY
Direct conveyance of real estate creating joint tenancy, 67-1602.1

JUDGES
See DISTRICT COURTS, Judges; SUPREME COURT, Justices
Arrest, judges privileged from arrest, 95-616
Disqualification of judges
civil cases, 93-901
criminal cases, 95-1709
place of trial, when change to be made, 93-2906

JUDGES (Continued)
Retirement system
actuarial investigations and valuations, 93-1112
administrative expenses, appropriation, budgets, 93-1110
beneficiary, nomination of, 93-1127
board for administration of system, creation and composition, 93-1109
call of retired judge for duty, reimbursement, 93-1130
contributions to system
back payments, payroll deduction, 93-1113
members, contributions by, 93-1115
payment into retirement fund, 93-1111
state contributions, 93-1116
death benefits, 93-1123, 93-1124
definition of terms, 93-1107
disability retirement allowance, 93-1119
dormant accounts, transfer to pension accumulation fund, 93-1132
errors, correction, 93-1129
establishment of system, 93-1108
exemption of benefits from taxation or process, 93-1126
false or fraudulent statements, penalty, 93-1129
funds
payments into judges' retirement fund, investment, 93-1111
transfer of dormant accounts to pension accumulation fund, 93-1132
involuntary retirement allowance, 93-1120
membership in system, 93-1113
military service, credit for, 93-1128
monthly payment of allowances, 93-1125
optional means of payment of benefits, 93-1131
penalty retirement allowance, 93-1121
refund of contributions on resignation or discharge, 93-1122
rules and regulations for administration of system, 93-1112
service allowance, computation of, certificate issued, 93-1114
service retirement allowance, amount, 93-1118
voluntary retirement, requirements for vesting of proportional retirement allowance, 93-1117
Salary increase during term permitted, 1889 Const., VIII, 29; 1972 Const., VII, 7

JUDGMENTS
Amendment to conform to new findings of fact, M. R. Civ. P., Rule 52(b)
Amount of judgment, M. R. Civ. P., Rule 54(c)
Assignment excluded from Uniform Commercial Code, 87A-9-104
Attorney fees, contractual right to recovery reciprocal, 93-8601.1
Contents of judgment, M. R. Civ. P., Rule 54(a)
Costs included in judgment, M. R. Civ. P., Rule 54(d)
Counterclaim, separate judgment on, M. R. Civ. P., Rule 13(i)
Criminal procedure, 95-2201 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment
Cross-claim, separate judgment on, M. R. Civ. P., Rule 13(i)
Declaratory judgment, action for, M. R. Civ. P., Rule 57
Default judgment
amount not to exceed that demanded, M. R. Civ. P., Rule 54(c)
entry of judgment, M. R. Civ. P., Rule 55(a)
extension of time by court or stipulation, M. R. Civ. P., Rule 55(c)
real estate broker residing outside state, entry against, 66-1936
setting aside default, M. R. Civ. P., Rule 55(c)
Definition, M. R. Civ. P., Rule 54(a)
Enforcement proceedings governed by statutes, M. R. Civ. P., Rule 69
Entry of judgment on verdict, M. R. Civ. P., Rule 58
notice of entry served on adverse party, M. R. Civ. P., Rule 77(d)
Findings of fact by court, separate statement, M. R. Civ. P., Rule 52(a)
Harmless error, effect on judgment, M. R. Civ. P., Rule 61
Mistaken judgment, grounds and procedure for relief from, M. R. Civ. P., Rule 60
Multiple claims or parties, judgment as to portion, M. R. Civ. P., Rules 4 D(10), 54(b)
Offer of judgment before trial, M. R. Civ. P., Rule 68
Part of defendants served, application of judgment to defendant later served, M. R. Civ. P., Rule 4 D(10)

JUDGMENTS (Continued)
Pleading of judgments, manner, M. R. Civ. P., Rule 9(e)
Pleadings, motion for judgment on, M. R. Civ. P., Rule 12(c)
Sales after judgment validated despite defects, 93-5846
Specific acts required by judgment, M. R. Civ. P., Rule 70
Stay of proceedings to enforce judgment, M. R. Civ. P., Rule 62
Summary judgments, motion for, M. R. Civ. P., Rule 56
Third-party practice, separation of judgment, M. R. Civ. P., Rule 14(a)
Tort action against state, judgment in, 83-705
Validation of recorded judgment or decree affecting realty, 93-5710.1 et seq.
Vesting of title by judgment, M. R. Civ. P., Rule 70
Voluntary partial payment of damage claim as credit to subsequently entered judgment, 93-2201-9

JUDICIAL DISTRICTS
Youth guidance homes, 10-1101 to 10-1111—See YOUTH GUIDANCE CENTERS, District youth guidance home

JUDICIAL NOMINATION COMMISSION
Appointment by governor to fill judicial vacancy from list submitted, 93-711
  governor's failure to make appointment, chief justice to appoint, 93-712
Appointment of commission members, 93-705
Composition of commission, 93-705
Creation, 93-705
Functions of commission, 93-705
Quorum, 93-708
Secretary, election, duties, 93-707
Senate confirmation of appointment required, 93-713
Submission of list to governor to fill vacancy on supreme court or district court, 93-710
  application for candidacy, qualifications, 93-709
  investigation of candidates, 93-709
Term of judicial appointment, 93-714
Terms of commission members, filling of vacancies, 93-706

JUDICIAL STANDARDS COMMISSION
Creation, composition, appointment of members, 93-718, 93-719
Determination and order by supreme court, 93-724
Disqualification of judge pending criminal prosecution or proceeding before commission, 93-726
Investigation of judicial officers, 93-722, 93-723
  alternative procedures available to commission, 93-722
  confidentiality of papers and proceedings, 93-723
  initiation of proceedings, 93-722
  recommendations to supreme court for censure, suspension, removal or retirement of judicial officer, 93-722
Judicial officer not to participate in investigation of self or relative, 93-725
Order of retirement, rights of judicial officer, 93-728
Removal of judicial officer from office, cessation of salary, suspension from law practice, ineligibility for judicial office, 93-728
  criminal conviction becoming final as cause for removal, 93-727
Reversal of criminal conviction, restoration of salary of officer, 93-727
Service by members without compensation, expenses, 93-721
Suspension of judicial officer without salary upon conviction of moral turpitude crime, 93-727
Termination of membership, filling of vacancy, 93-720
Terms of members, 93-719

JUNKYARDS
Regulation of junk yards along roads, 32-4513 to 32-4523—See HIGHWAYS, BRIDGES AND FERRIES, Junkyards along roads

JURIES AND JURORS
Additional jurors, drawing of, 93-1512

References are to Title and Section numbers

JURIES AND JURORS (Continued)
Advisory jury trial, M. R. Civ. P., Rule 39(c)
Alternate jurors, seating, M. R. Civ. P., Rule 47(c)
Challenges
cause, trial of challenges for, M. R. Civ. P., Rule 47(a)
six-member jury, peremptory challenges allowed, 93-1205
Coroner's inquest, number of jurors, jurors to be sworn, 95-803, 95-804
Court ordering jury trial, M. R. Civ. P., Rule 39(b)
Criminal cases, 95-1901 et seq.—See CRIMINAL PROCEDURE, Juries and jurors
Demand for jury trial, M. R. Civ. P., Rule 38(b)
Examination of prospective jurors, M. R. Civ. P., Rule 47(a),(b)
Fees payable to jurors, 25-401
Grand jury, 1972 Const., II, 20; 95-1401 to 95-1410—See GRAND JURY
Instructions to jury, objections and exceptions, M. R. Civ. P., Rule 51
Interrogatories to jury, M. R. Civ. P., Rule 49(b)
Issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
Jury lists
officers required to make, 93-1401
time for making, 93-1401
Mileage allowances to jurors for use of own vehicles, 59-801
liability for approval of excess amount, 59-802
Number of jurors
reduced juries, 1972 Const., II, 26; 93-1205, M. R. Civ. P., Rule 48
six-member jury in discretion of trial judge, 93-1205
Right to jury trial in civil cases, 1972 Const., II, 26; M. R. Civ. P., Rule 38(a)
declaratory judgment actions, M. R. Civ. P., Rule 57
Right to jury trial in criminal cases, 1972 Const., II, 24, 26
district court, 95-1901
justices' and police courts, 95-2004
Selection and examination of jurors, M. R. Civ. P., Rule 47(b)
State officers exempt, 93-1304
Summoning of jurors, 93-1509
Verdict—See VERDICTS
criminal cases, 95-1915—See CRIMINAL PROCEDURE, Verdicts
Waiver of right to jury trial, M. R. Civ. P., Rule 38(d)

JURISDICTION
Coroner, jurisdiction of, 95-812
Courts, jurisdiction of persons, M. R. Civ. P., Rule 4 B
Criminal cases, jurisdiction of courts and state criminal jurisdiction, 95-301 to 95-304

JUSTICES' AND POLICE COURTS (CIVIL MATTERS)
Pleadings—See PLEADINGS (CIVIL) in Parent Volume

JUSTICES OF THE PEACE
Absence from state forfeits judicial position, 1972 Const., VII, 10
Course of study following election, per diem and expense while attending, 93-401
Criminal cases, proceedings, 95-2001 to 95-2009—See CRIMINAL PROCEDURE, Justices' courts
Criminal jurisdiction, 95-302
Depositions, 93-7712
Disqualification
civil cases, 93-901
criminal cases, 95-1709
Election in each county, 1972 Const., VII, 5
Facilities to be provided by county, 93-412
Fees collected by justices
civil actions, 25-301
criminal actions, 25-310
monthly statement to accompany payment, 25-307
remittance to county treasurer, retention of certain miscellaneous fees, 25-311
Highway commission arrests, procedure and fees on, 32-1641
Holding court for another justice within county, jurisdiction, 93-403
Jurisdiction, 1972 Const., VII, 5

JUSTICES OF THE PEACE (Continued)
Number of justice courts per county, 1972 Const., VIII, 5; 93-401
Oath, requirements for filing, 93-401
Office hours to be designated by county commissioners, 93-414
Open continuously for transaction of business, exceptions, 93-402
Place of holding court, 93-402
Pleadings
demurrers and pleas abolished, 93-6802.2
enumeration of permissible pleadings, 93-6802.1
Political candidacy forfeits judicial position, 1972 Const., VII, 10
Practice of law by justice, restrictions on, 16-3605, 93-902
Qualifications, 1972 Const., VII, 5; 93-401
Removal and discipline, 1972 Const., VII, 11
Salaries, 1972 Const., VII, 5; 25-306, 93-413
Terms of justices, 1972 Const., VII, 7
justices in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4
Vesting of judicial power in justice courts, 1972 Const., VII, 1

JUVENILE COURT
Commitment of child to institution, reception and evaluation center, authority to commit to, 10-611.1
Delinquent children—See CHILDREN AND MINORS, Delinquent children
Hearings, exclusion of public, 10-611
Interstate compact on juveniles, 10-1001 to 10-1006—See CHILDREN AND MINORS, Interstate compact on juveniles
Probation officers and deputies, qualifications, appointment and compensation, 10-622
Publicity forbidden, 10-633
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

K

KIDNAPING
Prisoner holding hostage, 94-2604
Venue of prosecution, 95-411

KINDERGARTENS
Establishment and operation by school district authorized, 75-7507

L

LABOR
Apprenticeship council, 41-1201, 41-1202—See APPRENTICESHIP COUNCIL
Bartenders, minimum age, 41-1135
violation as misdemeanor, 41-1136
Board of labor appeals created, 82A-1008
functions of board, 82A-1009
Board of personnel appeals created, composition, functions, 82A-1014
Commissioner of labor and industry, term of office, salary, and oath, 41-1603
continuation as head of reorganized department, 82A-1001
Department of labor and industry, appointment of commissioner, 1972 Const., XII, 2; 82A-1001 to 82A-1010—See REORGANIZATION OF STATE GOVERNMENT, Department of labor and industry
Employment agencies, 41-1417 to 41-1438—See EMPLOYMENT AGENCIES
False advertising to induce change in place of employment unlawful, damages recoverable, 41-118
Hours of labor
maximum hours in regular day's work, 1972 Const., XII, 2
overtime payment required, 41-2303
Injury in employment, right to legal redress for, 1972 Const., II, 16
Labor activity interfering with one- or two-man retail or amusement establishment
beer and liquor establishments excepted from act, 41-1804
"immediate family" defined, 41-1803

LABOR (Continued)
Labor activity interfering with one- or two-man retail or amusement establishment (Continued)
intent of act, 41-1801
unfair labor practice, 41-1802
violation of act, penalty, 41-1805
Pursuit of life's basic necessities, right to, 1972 Const., II, 3
Restaurant, bar and tavern wage protection, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act
Safety codes
citation of act, 41-1708
definitions, 41-1709
employer's duties, 41-1710, 41-1711
existing structures and equipment, effect on, 41-1732
industrial accident board
closing unsafe place of employment, 41-1720
code-making power, 41-1727
compelling witnesses' appearance, proceeding to, 41-1714
compliance with order, allowance of reasonable time for, 41-1719
duty to establish department of safety, 41-1713
general research powers, 41-1729
hazardous places of employment, periodic inspections of, 41-1725
judicial review, 41-1721
notice of hearing on rules and codes, 41-1716
powers, 41-1713
power to prescribe safety devices and standards, 41-1715
prohibiting use of unsafe apparatus, 41-1718
rehearing before board, 41-1722 to 41-1724
safety orders, 41-1717
variations, grant of, 41-1728
workmen's complaints of safety violations, 41-1726
occupational health hazards, 41-1733
public contractors subject to act, 41-1731
safety devices, removal or refusal to use prohibited, 41-1712
violation a misdemeanor, 41-1730
Safety study commission
abolition of commission, 82A-1010
appointment of members, 41-2102
composition of commission, 41-2103
employment of secretary and research services, 41-2106
proposed changes in labor safety laws
adoption by legislature required, 41-2105
distribution to industry and legislature, 41-2104
purpose of act, 41-2101
records, commission required to keep, 41-2108
reimbursement of commission members, 41-2107
rules of procedure, adoption by commission, 41-2108
scope of work, 41-2102
State board of arbitration and conciliation abolished, 82A-1010
Vocational rehabilitation
board of education functions transferred, 82A-1903
quasi-judicial functions, 82A-1907
definition of terms, 41-801
division, 41-801 to 41-805
abolition of division and transfer of functions, 82A-1902
eligibility for rehabilitation, 41-808
handicapped persons, 41-816 to 41-819
definitions, 41-817
eligibility for rehabilitation service, determination by department, 41-818
federal funds, appropriation to use of department, 41-819
legislative purpose and findings, 41-816
purchase of rehabilitation services for handicapped persons authorized, maximum expenditures, 41-818
register of nonprofit organizations providing rehabilitation services to be maintained by department, 41-818
rules and regulations of department, 41-818

References are to Title and Section numbers

LABOR (Continued)
Vocational rehabilitation (Continued)
workmen's compensation coverage of persons in vocational rehabilitation, 92-411
workmen's compensation recipients, 92-1401 to 92-1404, 92-1406—See WORKMEN'S COMPENSATION, Rehabilitation of injured workmen
Wages—See WAGES
Winter work programs, 41-1901 to 41-1907—See WINTER WORK PROGRAMS
Women, employment of, 41-2401 to 41-2403
department of labor and industry, duties, 41-2402
legislative policy, 41-2401
rules, adoption authorized, 41-2403

LABORATORIES
Malpractice, statute of limitations, 93-2624

LABORATORY COMMISSION
Commission abolished, 82-3322

LACHES
Affirmative defense, M. R. Civ. P., Rule 8(c)

LAKES
Title to bed, proceedings to determine, 81-2305

LANDLORD AND TENANT
Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

LARCENY
Coin-operated machines, use of device to open or break machine unlawful, penalty, 94-35-249
Possession of stolen livestock as evidence of larceny, 94-2704.1
Venue of prosecutions, 95-408

LAW ENFORCEMENT ACADEMY
See COLLEGES AND UNIVERSITIES, Law enforcement academy, 75-5201 to 75-5208

LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS
Assessments for operational charges, 82-3903
Committee, members, terms, vacancies, meetings, compensation, duties, 82-3902
abolition of committee and transfer of functions, 82A-1202
Establishment of system by attorney general, 82-3901
Federal agencies, co-operation with, 82-3905
Local law enforcement agencies, participation in system, 82-3904
Powers of attorney general, 82-3903
Report of attorney general, 82-3906
State agencies included, 82-3901

LEGISLATIVE AUDIT ACT
Audit committee
appointment and terms of members, 79-2303
expenses for attending meetings, 79-2304
meetings, 79-2304
officers, 79-2303
Citation of act, 79-2301
Definition of terms, 79-2302
Employees, appointment by auditor, 79-2306
Examinations of agencies, information required, 79-2312
Legislative auditor
appointment and qualifications, 79-2305
assistance to legislative assembly during sessions, 79-2311
duties, 79-2308
removal, notice and hearing, 79-2307
term of office, 79-2307
Notice to auditor of suspected misappropriation of state property, 79-2312

LEGISLATIVE AUDIT ACT (Continued)
Purpose of act, 79-2301
Recommendations of auditor, enforcement powers limited, 79-2310
Standards and objectives of audits of state agencies, 79-2309

LEGISLATIVE COUNCIL
Commission on interstate cooperation
council constitutes, 82-2112
council of state governments declared joint governmental agency, 82-2113
delegations and committees, 82-2112
function, 82-2112
Compensation and expenses of members, legislature not in session, 43-714
Establishment authorized, 1972 Const., V, 10
Functional divisions within council, establishment authorized, divisions included, 43-711
Laws, resolutions and journals of legislative assembly, duties of council in respect to, 43-711.1 to 43-711.5
distribution of bound copies, 43-711.2
expenses, how paid, 43-711.5
new county boundaries to be included in session laws, commencement date, 43-711.4
printing and indexing, 43-711.1
publication and indexing of laws, form, 43-711.3

LEGISLATIVE PROCEEDINGS—DISSEMINATION
Fee for complete set of legislative proceedings, 43-902
Funds, accounting and use of, 43-902
"One complete set" defined, 43-901
"Person" defined, 43-901
Press, radio and television, excepted from act, 43-903
"Proceedings of the legislature" defined, 43-901
Public officials, exemption from act, 43-904
Single copies of matters, fee, 43-902
Status sheets, single copies, fee, 43-902

LEGISLATURE
Adjournments, limitations upon, 1972 Const., V, 10
Annual meetings required, 1972 Const., V, 6
Apportionment, 1889 Const., VI, 2, 3; 1972 Const., V, 14
reapportionment commission to be selected decennially, 1972 Const., V, 14; 43-108
appointment of commissioners, 43-109
commissioners ineligible for legislative office, 43-118
dissolution of commission upon adoption of plan, 43-117
final plan, filing with secretary of state, 43-117
per diem and expenses of commissioners, 43-111
public hearing on reapportionment plan, 43-114
return of plan by legislature with recommendations, 43-116
state agencies to co-operate, 43-113
submission of reapportionment plan to legislature, time for, 43-115
technical and clerical services to be provided, 43-112
vacancies on commission, how filled, 43-110
representative districts and apportionment, 43-106.7
senatorial districts and apportionment, 43-106.6
multimember district, division into single-member districts authorized, procedure, 43-106.8
terms of office adjusted by classes, 43-106.9
Appropriation bills, item veto, 1972 Const., VI, 10; 43-502
Approval of bill by governor, 1972 Const., VI, 10; 43-502
Arrest, members privileged from arrest, 1972 Const., V, 8; 95-616
Attendance of absent members, less than majority may compel, 1972 Const., V, 10
Audit committee, appointment of members, 79-2303—See LEGISLATIVE AUDIT ACT
Bills
adjournment of session, pending bills carry over, 1972 Const., V, 6
alteration or amendment changing original purpose prohibited, 1972 Const., V, 11
appropriation bills, 1972 Const., V, 11

References are to Title and Section numbers

LEGISLATURE (Continued)
Bills (Continued)
ayes and noes to be recorded, 1972 Const., V, 11
challenge of law for technical errors in passage, time limit, 1972 Const., V, 11
failure by governor to return within time allowed, bill becomes law, 43-505
governor, submission to for signature, 1972 Const., VI, 10; 43-501
private religious, charitable, industrial, educational or benevolent purposes, appropriation for prohibited, 1972 Const., V, 11
special or local acts prohibited, 1972 Const., V, 12
subject clearly expressed in title, 1972 Const., V, 11
veto by governor, 1972 Const., VI, 10
legislature not in session, 43-504
vote required for passage, 1972 Const., V, 11
Budget, submission by governor, 1972 Const., VI, 9
Code of ethics for members, 1972 Const., XIII, 4
Commission for redistricting and reapportioning legislative and congressional districts, 1972 Const., V, 14
Committees, power to establish, 1972 Const., V, 10
functions while legislature not in session, 43-718
meetings open to public, 1972 Const., V, 10
priorities, committee on created, composition, functions, 43-717
determination of priorities for standing and select committees, 43-719
Compensation of members, 1972 Const., V, 5; 43-310
legislature not in session, 43-310.1
Composition of legislature, 1972 Const., V, 1
Continuity of government in emergency, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Continuous body for two-year periods, 1972 Const., V, 6
Effective dates of new constitutional provisions
accelerated effective date of V, 6, 14, 1972 Const., Transition Schedule, Sec. 1
delayed effective date of V, 1 to 3, 1972 Const., Transition Schedule, Sec. 2
Election of members, 1972 Const., V, 3
contested election, power of courts to try, 1972 Const., V, 10
each house judge of election and qualifications of members, 1972 Const., V, 10
Emergency session of state senate for purpose of election of president pro tempore to assume governorship in event of enemy attack, 82-1309
Expense allowances for members, 43-310
Expulsion of member, vote required, 1972 Const., V, 10
Fiscal notes in legislative bills
background information to be made available to legislators, 43-1006
bills requiring note, 43-1001
budget director and affected agencies to prepare note, 43-1002
comment on merits of bill prohibited, 43-1004
committee reports to include note, 43-1001
committee request for note, 43-1005
contents of notes, 43-1004
house request for note on second reading, 43-1005
presiding officer to determine need for note on introduction of bill, 43-1001
reference of completed note to committee, 43-1003
reproduction and distribution of note, 43-1003
time allowed for preparation of note, 43-1002
Governor's power to convene legislature, 1972 Const., V, 6, VI, 11
Governor returning bill with recommendation for amendment, procedure, Art. VI, 10; 43-502
Hearings open to public, 1972 Const., V, 10
House of representatives, number of members, 1972 Const., V, 2
one member for each district, 1972 Const., V, 14
Impeachment of officers, procedure, 1972 Const., V, 13
Initiative and referendum powers reserved by the people, 1972 Const., V, 1—See INITIATIVE AND REFERENDUM
Journal of proceedings to be kept, 1972 Const., V, 10
Legislative Fiscal Review Committee
compensation of committee members, 43-1106

References are to Title and Section numbers

LEGISLATURE (Continued)
Legislative Fiscal Review Committee (Continued)
composition, 43-1101
duties, 43-1102
fiscal analyst and other staff, 43-1108
investigation of costs of government, 43-1104
organization, procedure and records, 43-1107
powers, 43-1103
subpoena and related investigative powers, 43-1105
Length of sessions, 1972 Const., V, 6
Lobbying—See LOBBYING
Messages submitted by governor, 1972 Const., VI, 9
Mileage allowances to members for travel in own vehicles, 59-801
liability for approval of excessive amounts, 59-802
Number of members, 1972 Const., V, 2
Oath of office, 1972 Const., III, 3
Officers chosen from members, 1972 Const., V, 10
Organization
pre-session caucus, 43-218
rosters prepared from election records by secretary of state, 43-206.1
tie vote, candidate of governor's party elected, 43-210.1
Other public office, disqualification of legislators from holding, 1972 Const., V, 9
Per diem of members, 43-310
Post-attack continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Power of legislature, 1972 Const., V, 1
Publication of proceedings
definitions, 43-901
fees for copies, 43-902
free copies, who receives, 43-903
public officials exempt, 43-904
Punishment of member, vote required, 1972 Const., V, 10
Qualifications of members, 1972 Const., V, 4
election and qualifications judged by each house, 1972 Const., V, 10
Quorum, majority of each house constitutes, 1972 Const., V, 10
Recess, limitations upon, 1972 Const., V, 10
Salary of members, 1972 Const., V, 5; 43-310
legislature not in session, 43-310.1
Senate, number of members, 1972 Const., V, 2
district, composition of, 1972 Const., V, 14
Separation of powers, 1972 Const., III, 1
Sessions
annual meetings, 1972 Const., V, 6
open to public, 1972 Const., V, 10
special sessions, 1972 Const., V, 6, VI, 11
Size of legislature, 1972 Const., V, 2
Special session convened by governor or majority of legislators, 1972 Const., V, 6; 43-319
governor's power to convene legislature, 1972 Const., VI, 11
immediate special session, request by legislators, number required, 43-323
letter of legislator approving or rejecting call as ballot, 43-323
notice, contents, 43-323
legislature in session, call of future special session by majority vote, 43-320
legislature not in session, poll of members, 43-321
affirmative reply to poll, notice of date and time of special session, 43-324
ballot on request for special session, 43-322
failure to approve special session, effect, 43-325
written request of members, number required, contents, 43-321
members' power to convene legislature, 1972 Const., V, 6
Structure of legislature, 1972 Const., V, 1
Subcommittees to be appointed by legislative standing committees, composition, functions, 43-716

LEGISLATURE (Continued)
Terms of members, 1972 Const., V, 3
legislators elected before effective date of new constitution, 1972 Const., Transition Schedule, Sec. 5
senators first elected under new constitution, 1972 Const., Transition Schedule, Sec. 5
Vacancies, how filled, 1972 Const., V, 7
county commissioners, appointment by, 43-215
alternate method on failure to receive majority vote, 43-216
"vacancy" defined, 43-217
Vesting of legislative power in legislature, 1972 Const., V, 1

LETTERS OF CREDIT
Advice of credit by another bank, obligations assumed by advising bank, 87A-5-107
Anticipatory repudiation by issuer, rights of beneficiary after, 87A-5-115
Assignment of right to draw under letter, effect, 87A-5-116
Authenticity of third-party documents presumed, 87A-1-202
Banks' power to issue letters, 5-1001
Cancellation of credit, liability of issuer, 87A-5-115
Citation of Uniform Commercial Code chapter, 87A-5-101
Confirmation of credit by another bank, obligation assumed by confirming bank, 87A-5-107
Consideration not required to establish credit, 87A-5-105
Contract underlying credit, issuer not responsible for performance, 87A-5-109
Course of dealing between parties, 87A-1-205
Definition of terms, 87A-5-103
general definitions in Uniform Commercial Code, 87A-1-201
index of definitions, 87A-5-103
Dishonor of draft or demand for payment
time allowed for, 87A-5-112
wrongful dishonor, liability of issuer, 87A-5-115
Documentary draft credit, application of chapter to, 87A-5-102
Documents related to credit
adequacy of document governed by chapter on letters of credit, 87A-7-509
examination of documents by issuer, 87A-5-109
insolvency of issuer or bank, rights of parties, 87A-5-117
noncomplying document in fact, payment by issuer of letter on, 87A-5-114
relinquishment by person presenting demand for payment, 87A-5-110
wrongful dishonor of draft or demand for payment, rights of person entitled to honor after, 87A-5-115
Erroneous advice of credit, liability of original issuer, 87A-5-107
Formal requirements for credit, 87A-5-104
Good faith required, 87A-1-203, 87A-5-109
Honor of draft or demand for payment, duty and privilege of issuer, 87A-5-114
Indemnity agreement to obtain honor, negotiation or reimbursement, 87A-5-113
Insolvency of issuer or advising or confirming bank, effect, 87A-5-117
Issuer's obligation to his customer, 87A-5-109
Modification of credit, when permitted and effect, 87A-5-106
Notation credit, obligation of party paying on, 87A-5-108
Order of payment of competing drafts or demands, 87A-5-108
Partial use of credit authorized, 87A-5-110
Phrasing of credit, no particular form required, 87A-5-104
Reimbursement of issuer after payment of draft or demand, 87A-5-114
Repudiation of credit by issuer, liability, 87A-5-115
Reservation of rights by party while performing or accepting performance, 87A-1-207
Revocation of credit, when permitted and effect, 87A-5-106
Sales contract requiring furnishing of letter of credit, 87A-2-325
Scope of Uniform Commercial Code chapter, 87A-5-102
Security interest in letter perfected by possession of secured party, 87A-9-305
Short title of Uniform Commercial Code chapter, 87A-5-101
Telegraphic letter, sufficiency, 87A-5-104
Time allowed for honor or rejection of draft or demand for payment, 87A-1-204, 87A-5-112
Time of establishment of credit, 87A-5-106
Transfer of right to draw under credit, 87A-5-116

References are to Title and Section numbers

LETTERS OF CREDIT (Continued)
Transmission and translation risk borne by customer, 87A-5-107
Usage of trade, application, 87A-1-205, 87A-5-109
Warranties on transfer or presentment of draft or demand for payment, 87A-5-111

LIBEL
Notice to publisher or broadcaster and opportunity to correct, 64-207.1
Truth as evidence in suits and prosecutions, determination of law and facts by jury, 1972 Const., II, 7

LIBRARIES
Free public libraries
board of trustees, appointment, 44-221
compensation, 44-221
composition of board, 44-221
powers and duties, 44-222
term of office, 44-221
vacancies, 44-221
chief librarian, appointment by board, 44-223
"city" defined, 44-227
continued existence of all public libraries, 44-228
establishment of library by resolution, petition or election, 44-219
exemption from county tax of city or town with own library, 44-226
financing public library by city or county tax levy or bonds, 44-220
merging of boards, institutions and agencies in providing library services, 44-225
personnel, appointment and compensation, 44-223
purpose of act, 44-218
use of library, 44-224
Historical and miscellaneous library
antique automobile collection, disposition of admission fees, 44-529
independent of other libraries, 44-518
Interstate library compact
administrator, executive officer of state library commission, 44-602
text of compact, 44-601
Joint city-county libraries authorized, apportionment of expense, tax levy, 44-219.1
board of trustees to govern, composition, organization, powers and duties, 44-219.2
Joint county or regional library, participation of other governmental units, 44-213
School library required, 75-7517
policies established by trustees, 75-7518
public use of school libraries, 75-7518
reports to state department on school libraries, 75-7520
sectarian publications not to be included, 75-7521
selection of books for libraries, 75-7519
standards of accreditation, 75-7517
State law library
accounts, approval by board of trustees, 44-410
construction of supreme court and law library building
acquisition of land, 78-1203
architects and engineers, employment authorized, 78-1202
bonds, indentures and notes, 78-1205 to 78-1208
borrowing authorized, 78-1201, 78-1204
budget act inapplicable, 78-1209
State library commission created, composition and terms of office, 44-127
continuation in department of education, 82A-509
powers of commission, 44-131
State publications distribution center
creation of center, 44-133
definition of terms, 44-132
depository contracts, eligibility and standards, 44-135
exempt state agencies and officers, 44-139
general public distribution prohibited, 44-138
inter-library loan of state agency publications, 44-134
lists of available publications, distribution by center, 44-136
regulations, made by state library commission, 44-133

LIBRARIES (Continued)
State publications distribution center (Continued)
sale of state agency publications, 44-134
state agency lists of current publications furnished to center, 44-137
state agency publications deposited with library, 44-134
Tax exemption of property, 1972 Const., VIII, 5

LICENSES
Affirmative defense, M. R. Civ. P., Rule 8(c)
County licenses, disposition of proceeds, 84-2708
Dog licensing, 16-4601 to 16-4615—See DOGS
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 8(a), Table A

LIENS
After-acquired property, lien on, 45-109
Agisters' lien
possession of property, right of lien holder to take, 45-1107
priority, 45-1106
Artisan's lien
possession of property, right of lien holder to take, 45-1107
priority, 45-1106
Bulk Transfer chapter inapplicable to lien foreclosure, 87A-6-103
Compensation for expense, lien holder not entitled to, 45-116
Criminal offenses, judgment to pay fine constitutes lien, 95-2208
Definition of term, 19-103
Factor's lien, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Farm laborers' lien, duty to acknowledge and discharge on satisfaction, 45-911
Federal tax lien, 45-1501 to 45-1507—See TAXATION, Federal tax lien
Forfeiture of property subject to lien, contracts for void, 45-112
Future property, lien on authorized, 45-109
Hail insurance liens, duty to acknowledge and discharge on satisfaction, 45-707
Income tax lien, release or discharge of property from, 84-4958
Labor and material on oil and gas leasehold or pipeline, 45-1003
effective date of lien, 45-1004.2
perfection of lien, procedure, 45-1004.1
priority, 45-1004.2, 45-1004.3
Mechanic's lien
bond filed by property owner, amount and conditions, 45-513
action on bond, 45-515
discharge of lien on filing of bond, 45-514
notice of completion, contents, filing and publication, 45-502.1
events constituting completion of work, 45-502
time for perfection of lien after filing notice, 45-502
Uniform Commercial Code chapter not applicable, 87A-9-104
Redemption from lien
restraining contracts void, 45-112
time when property may be redeemed, 45-301
Restoration of property to owner extinguishing lien, exceptions, 45-308
Seed liens
filing and retention of records, 16-2922
destruction of records, when allowed, 16-2923
satisfaction of lien, duty to acknowledge, 45-704
Spraying lien on crops, acknowledgment of satisfaction and discharge, 45-1410
Threshermen's lien
filing and retention of records, 16-2922
destruction of records, when allowed, 16-2923
satisfaction of lien, duty to acknowledge and discharge, 45-809
Unit ownership property, attachment and release of liens against, 67-2324
blanket liens released on conveyance of unit, 67-2323
common expenses, lien against individual units for, 67-2326
foreclosure of lien, 67-2327
purchaser at foreclosure not liable for expenses, 67-2329
rent paid by unit owner after foreclosure, 67-2328

LIENS (Continued)
Unit ownership property (Continued)
transfer of liens on removal of property from act, 67-2335
consent of lien holders required for removal, 67-2332

LIEUTENANT GOVERNOR
Candidacy for public office during term authorized, 1972 Const., VI, 5
Creation of office, 82-1702.1
Delegation of governor's constitutional powers prohibited, 1972 Const., VI, 4
Duties, 1972 Const., VI, 4; 82-1702.2, 82-1702.3
Election, joint filing with candidate for governor, 1972 Const., VI, 2
Executive branch, member of, 1972 Const., VI, 1
Impeachment, subject to, 1972 Const., V, 13
Oath of office, 1972 Const., III, 3
Other government employment prohibited during term, 1972 Const., VI, 5
Qualifications, 1972 Const., VI, 3
Residence at seat of government, 1972 Const., VI, 1
Salary, 1972 Const., VI, 5; 25-501
Succession to office of governor, 1972 Const., VI, 6, 14
Term of office, 1972 Const., VI, 1
Vacancy in office, how filled, 1972 Const., VI, 6
inability to discharge powers and duties of office, legislative declaration of vacancy, 59-609
Vacancy in office or incapacity of governor and lieutenant governor, 82-1304.1 to 82-1304.5—See GOVERNOR, Vacancy in office of governor and lieutenant governor

LIMITATION OF ACTIONS
Affirmative defense in civil proceedings, M. R. Civ. P., Rule 8(c)
Annulment of marriage, action for, 48-203
Bond issues of state or municipalities, actions and defenses relating to issuance, 93-2612
Bulk transfers, actions to invalidate, 87A-6-111
Commercial paper, time of accrual of action, 87A-3-122
Construction of improvements to real property, action for damages from, 93-2619 to 93-2623
Medical malpractice, 93-2624
Probate contest, 91-1107
Sale of goods contract, actions arising out of, 87A-2-725
Subdivided lands, accrual of cause of action arising from sale or lease outside state, 67-2115
Support obligations of father of illegitimate child, 93-2901-3
Tax overpayment, time for filing claim for refund, 84-726
Trust indenture foreclosure proceedings, 52-407

LIQUEFIED PETROLEUM PRODUCTS
See PETROLEUM PRODUCTS, 60-223 to 60-233

LITTER CONTROL LAW
Citation of act, 94-3343
Definitions of "litter" and "public or private property," 94-3337, 94-3338
Enforcement of act, 94-3341
Legislative intent to prevent littering, 94-3335
Littering public or private properties unlawful, exceptions, 94-3336
Notices of act and penalties posted on highways, 94-3344
Penalties for violations, 94-3339
Prima facie violation by operators of conveyances, 94-3340
Receptacles maintained in public places, 94-3342

LIVESTOCK
Commission
continuation of commission as board of livestock, 82A-1303
expenses, audit and payment, 46-105
inspectors and detectives, control and payment, 46-704
rule-making power, 46-802
transfer of functions to board, 82A-1304

LIVESTOCK (Continued)
Dead animals, unlawful disposition, penalty for violations, 69-4518, 69-4519
Dealers in livestock
bond required of dealer, 46-2904
unbonded business prohibited, 46-2902
citation of act, 46-2908
definition of terms, 46-2901
enforcement of requirements by livestock commission, 46-2907
false entries or filings prohibited, 46-2902
insolvent dealer prohibited from carrying on business, 46-2902
inspection of records by commission, 46-2905
license to engage in business, 46-2903
unlicensed business prohibited, 46-2902
penalties for violations, 46-2906
records required of dealers, 46-2905
rules and regulations, 46-2907
Department of livestock created, 82A-1301
board of livestock, continuation, 82A-1303
transfer of functions to board, 82A-1304
functions of department, 82A-1302
head of department, 82A-1301
Estrays
definition of "estray," 46-1005
proceeds of sale, disposition, 46-1006
publication of description of estrays sold, 46-1006
Hides
buyers and dealers
acting without license, penalty, 46-1107.1
fees for licenses, disposition, 46-1107
revocation of license for violations of act, 46-1107.1
certificate from buyer of hide required, 46-1101.2
falsification of certificate, penalty, 46-1102
definition of terms, 46-1101.1
identification tag to be affixed, 46-1101.2
penalty for failure to affix tag, 46-1102
unknown ownership, seizure and sale of hides, 46-1114
Highways through open range, fencing along, 32-2426, 32-2427
"open range" defined, 32-2426
Hours of labor, stock-raising employment excepted from maximum hours provision, 1972 Const., XII, 2
Inspection before sale or removal from county
fees for inspection and permit, 46-804
penalties for violation of act, 46-806
seizure, retention, and sale of suspect animals, 46-803
sheep removal permits
fee for issuance of permit, 46-811
form of permit, 46-811
misdemeanor to remove sheep without permit after order, 46-810
petition of sheep raisers requesting permit order, 46-809
publication of notice, 46-812
removal of permit requirement, 46-813
unauthorized removal from state as felony, 46-808
License requirements unaffected by dairy products provisions, 3-24-129
Markets
license fee, deposit and use, 46-911
receipt for livestock consigned for sale, 46-918.1
sales of stray stock, disposition of proceeds, 46-904
Marks and brands, fees for recording, 46-609
Obliterated marks and brands, compensation for animals killed, 46-707
Protective districts
intercounty districts
declarations by county commissioners to form district, 46-2801
discontinuance of district, 46-2805
formation of districts authorized, 46-2801

LIVESTOCK (Continued)
Protective districts (Continued)
intercounty districts (Continued)
petitions for formation of district, 46-2801
protective committee
powers and duties of committee, 46-2803
selection of members, 46-2802
removal of area from district, 46-2805
tax levy for special deputy fund, 46-2804
one-county districts
declaration by county commissioners to form district, 46-2806
discontinuance of district, 46-2810
formation of districts authorized, 46-2806
petition for formation of district, 46-2806
protective committee
powers and duties of committee, 46-2808
selection of members, 46-2807
tax levy for special deputy fund, 46-2809
Range livestock, method of taking possession by mortgagee or assignee, 93-4344
filing of papers by county clerk, 93-4346
Road construction areas, running at large prohibited, 32-319
impounding of animals at large, 32-320
penalty for violation, 32-321
Sanitary board abolished and functions transferred, 82A-1304
Secured transactions, application of loan law to, 87A-9-203
Security agreements concerning livestock, filing with recorder of marks and brands, 52-319
collection of debt, officers not responsible for, 52-323
contents of notices, 52-320
fees chargeable, disposition, 52-322
satisfaction of agreement, duty to file, 52-321
Snowmobile, restrictions on use to drive livestock, 53-1020
Stolen livestock
forfeiture of vehicles used in transporting, 94-35-204, redes. 46-3005
possession as evidence of larceny, 94-2704.1
Taxation—See TAXATION, Livestock
levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
Trespassing stock
forest reserves, land in or adjoining to be marked, 46-1411
claim for damage not allowed in absence of marking, 46-1413

LOANS
Consumer loan act, 47-201 to 47-228—See CONSUMER LOAN ACT
Interest, legal rate, 47-124
Minors, capacity to borrow for education, 64-106
Real estate loans by banks, limitation on, 5-506
Secured Transactions chapter, laws unaffected by, 87A-9-201

LOBBYING
Briefs or statements, depositing copies with secretary of state, when, 43-806
Docket
appearance of name on docket before practice as a lobbyist, 43-806
definition, 43-802
name of lobbyist to be entered on, 43-804
preparation and keeping by secretary of state, 43-805
public record, inspection, 43-805
License of lobbyist
application, 43-803
eligibility for, 43-803
expiration, 43-803
fee, 43-803
required, 43-806
suspension or revocation of license, 43-803

References are to Title and Section numbers

LOBBYING (Continued)
"Lobbying" defined, 43-802
Lobbying privileges, suspension, when, 43-803
"Lobbyist" defined, 43-802
"Pecuniary interest" defined, 43-802
Persons not required to be licensed or registered, 43-807
Principal
definition, 43-802
entering name of lobbyist on docket, duty, 43-804
Purpose of act, 43-801
Secretary of state
preparation and keeping of docket, 43-805
weekly report to legislature, 43-805
"Unprofessional conduct" defined, 43-802
Violations of act, penalty, 43-808
Written authorization to act, filing by lobbyist, 43-805

LONG-TERM CARE FACILITIES
Advisory council on hospitals and long-term care facilities, composition and appointment, 69-5214
abolition of council, 82A-609
meetings of council, 69-5215
term of members, 69-5215
Alteration of facilities, approval of state board required, 69-5212
Confidential nature of information received by state department, 69-5218
Freedom of choice of physician protected, 69-5217
Injunction for protection of health and welfare, 69-5220
License required for operation of facility, 69-5203
application for license, procedure, 69-5205
definition of terms, 69-5201
denial of license, grounds, 69-5207
judicial review of denial of license, 69-5211
procedure for denial, 69-5210
federal facilities exempt from requirement, 69-5202
fees for license, 69-5204
inspection of facility and issuance of license, 69-5206
records and reports required of facilities, 69-5219
revocation or refusal to renew license, grounds, 69-5208
judicial review of revocation or refusal, 69-5211
procedure for revocation or refusal, 69-5210
rules and standards for facilities, scope and publication by state board, 69-5213, 69-5216
Malpractice, limitation of actions, 93-2624
Penalty for violations of licensing chapter, 69-5221

LOTTERIES
Prohibition against lotteries unless authorized by legislature or by people, 1972 Const., III, 9

M

MACHINE GUNS
Registration functions transferred to department of law enforcement, 82A-1203

MALPRACTICE
Emergency care at scene of accident, restriction on liability for, 17-410
Insurance coverage, restrictions on cancellation or increase of premiums, 40-4413, 40-4414
Limitation of actions for medical malpractice, 93-2624

MANAGEMENT OF INSTITUTIONAL FUNDS
Citation of act, 86-809
Definition of terms, 86-801

MANAGEMENT OF INSTITUTIONAL FUNDS (Continued)
Endowment funds, appropriation and expenditure of appreciated value, 86-802
ordinary business care and prudence required, 86-806
prohibited when contrary to donor's intention, 86-803
terms from which donor's intention not implied, 86-803
"Institution" defined, 86-801
Investments allowable, 86-804
delegation of investment authority, compensation for advisory or management services, 86-805
ordinary business care and prudence required, 86-806
Release of restrictions in gift instrument, 86-807
consent of donor, 86-807 (1)
cy pres doctrine, application not limited, 86-807 (4)
judicial release, limitations, 86-807 (2)
limitations upon use of fund following release, 86-807 (3)
Uniformity of construction, 86-808

MANDAMUS
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

MARRIAGE
Age when marriage permitted, 48-143
Annulment of marriage, action for, 48-203
child custody and support, orders concerning, 48-207
conciliation petition filed, stay of proceedings after, 36-204
legitimacy of children unaffected by judgment, 48-207
minority as ground for annulment, 48-202
registrar of vital statistics, report to, 69-4433
judicial information included in report, 69-4434
time within which action to be brought, 48-203
Breach of promise
acts within state not to give rise to cause of action, 17-1203
cause of action abolished, 17-1202
litigation and threat of litigation prohibited, 17-1204
penalty for bringing action, 17-1206
settlements and compromises void, 17-1205
Capacity to marry, 48-143
Certificate of marriage, report to registrar of vital statistics, 69-4432
Conciliation of controversies, 36-201 to 36-205—See HUSBAND AND WIFE, Conciliation of controversies
Consent of parent or guardian, when required, 48-143
Declaration of marriage without solemnization
drafting of declaration, persons authorized, 48-130.1
penalty for violation of act, 48-130.2
Foreign marriages, recognition in this state, 48-150
License to marry
applicant under influence of liquor or drug, license not to be issued, 48-147
application for license, form, 48-144
consent of parent or guardian, when required, 48-143
county in which license must be obtained, 48-146
dispensation to issue license before end of waiting period, 48-118.1
issuance of license, 48-149
nonresident applicants, place of issuance of license, 48-146
objections to issuance of license, filing and hearing on, 48-149
policy of state, applicants advised concerning, 48-145
posting of notice of application for license, 48-149
required for marriage, 48-146
support obligation, license not issued to persons delinquent, 48-148
waiting period before issuance of license, 48-118.1
Married minors' consent to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS

MARRIAGE (Continued)
Policy of state concerning marriage, 48-142
advice to license applicants of policy, 48-145
Proof of age before issuance of license, 48-134
Proof of solemnization of marriage
acknowledgment and recording of declaration of marriage, 48-132
contents of written declaration, 48-131
method of proof when no record exists, 48-131
official record of marriage, 48-132

MASSEURS
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment of board members, 66-2903
bond of treasurer, 66-2911
continuation in office of board members, 82A-1606
dismissal and replacement of board members, 66-2911
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
meetings of board, 66-2904
organization of board, 66-2904
per diem for board members, 66-2910
powers and duties, 66-2904, 82A-1605
qualifications of board members, 66-2903
retention of functions by board, 82A-1605
Definitions, 66-2902
Exemptions, 66-2914
Licenses required for practice of massage, 66-2905
application for license, 66-2906
examination for licenses, 66-2907
waiver of examination for masseurs practicing before passage of law, 66-2905
fees for licenses, 66-2906
disposition of funds, 66-2910
receipts and disbursements out of fund, 66-2910
foreign practitioners, admission to practice, 66-2912
refusal of license, 66-2908
renewal of license, 66-2909
revocation of license, 66-2908
temporary permits to license applicants, 66-2905
Penalty for violation of act, 66-2913
Purpose of regulatory act, 66-2901

MASTERS
Appointment and compensation by district court, M. R. Civ. P., Rule 53(a)
Findings of master, adoption by court, M. R. Civ. P., Rule 52(a)
Powers of master, M. R. Civ. P., Rule 53(c)
Pre-trial conference, consideration of reference to master, M. R. Civ. P., Rule 16
Proceedings before masters, M. R. Civ. P., Rule 53(d)
Reference to master, M. R. Civ. P., Rule 53(b)
Report of master, M. R. Civ. P., Rule 53(e)
Statement of accounts submitted to master, M. R. Civ. P., Rule 53(d)
Witnesses before masters, M. R. Civ. P., Rule 53(d)

MATTRESSES
Shoddy control, 69-4701 to 69-4707—See SHODDY

MAUSOLEUMS AND COLUMBARIUMS
Limitation of action against mausoleum-columbarium authority, 9-604
Mortician exempt in damages for remains delivered to authority, 9-604

MEAT
Markets, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments

References are to Title and Section numbers

MENTAL RETARDATION

Boulder River School and Hospital, 80-2303 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Community-centered program, establishment, 80-2607
  factors considered in approving or rejecting programs, 80-2609
  rules, regulations and standards, 80-2610
Definition of "mental retardation," 80-2605
Division of mental retardation established, 80-2601
  functions of division, 80-2606
  institutions in division, 80-2602
  supervision by superintendent of Boulder River School, 80-2603
Eastmont Training Center at Glendive, 80-2310 to 80-2312
  division of mental retardation, center under, 80-2602
  functions of center, 80-2604
  nonresident patients, 80-2310
Nonprofit corporations, use to furnish services to mentally retarded persons, 80-2608
  rules, regulations and standards, 80-2610
State Training School and Hospital, 80-2303 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL

METROPOLITAN SANITARY AND STORM SEWERS

Boundary changes in districts, 16-4414
Distance from which pollution is presumed, 16-4415
Operation and maintenance
  budget
    filed with county clerk, 16-4416.2
    laws governing, 16-4416.3
  public hearing on levy, notice, 16-4416.1
  records of collections and expenditures, 16-4416.4
Rates, charges and rentals, establishment, 16-4416
Reserve fund, establishment, maintenance and use, 16-4417
Validation of previous proceedings, 16-4418

MILITIA AND MILITARY

Adjutant general, qualifications and appointment, 77-117, 82A-1401
  biennal report to governor, 77-120
  duties, 77-120
  head of department of military affairs, 82A-1401
  salary, 77-117, 77-120
  transfer of functions to department, 82A-1403
Armories
  agreements with federal government, assent to, 77-417
  gifts and donations, acceptance, 77-419
  National Defense Facilities Act, acceptance, 77-417
  physical plant fund abolished, 79-416
  title to property acquired, 77-419
Arrest, members privileged from arrest, 95-616
Assistant adjutant general, 77-117
Call of state forces, when authorized, 1972 Const., VI, 13
Civilian control, 1972 Const., II, 32
Composition of state forces, 1972 Const., VI, 13
Continuity of government in emergency, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Department of military affairs created, 82A-1401
  functions of department, 82A-1402, 82A-1403
  head of department, 82A-1401
Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1
Governor as commander-in-chief, 1972 Const., VI, 13
Importation of armed persons or forces prohibited, exception, 1972 Const., II, 33
National guard
  claims against guard appropriation, method of presenting and payment, 77-151
  employees members of public employees' retirement system, 68-2510
  vehicles of guardsmen, distinctive plates authorized, 53-106.7

MILITIA AND MILITARY (Continued)
Post-attack continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management
Quartering of soldiers in houses prohibited, 1972 Const., II, 32
Servicemen, servicewomen, and veterans, special treatment, 1972 Const., II, 35

MILK CONTROL BOARD
See DAIRIES AND DAIRY PRODUCTS

MINES AND MINING
Coal mining
boards of examiners, abolition and transfer of functions, 82A-1005
safety standards for roof supports, 50-474
Eminent domain not available for strip or open pit mining, 93-9902, 93-9902.1
False mining claims, filing prohibited, punishment, 50-702.1
Minimum standards for roof support, 50-474
daily inspection by mine foreman, 50-501
violation of act, penalty, 50-475
Notice to landowner required before commencement of surface operations, 50-1303
approval by landowner required, 50-1303
ascertainment of ownership and possessory right required, 50-1302
discovery pits on federal lands exempt, 50-1304
immunity of landowner for personal injuries, 50-1306
prospecting permit or lease by mineral owner, exemption for, 50-1305
short title of act, 50-1301
violation as misdemeanor, 50-1306
Open cut mining of Bentonite, sand or gravel, 50-1501 to 50-1516
bond required of operator, terms, deposit in lieu of bond, substitution of sureties, forfeiture, release, 50-1508, 50-1509, 50-1510
reclamation by commission upon forfeiture of bond, 50-1509, 50-1514
commission authorized to do reclamation work, 50-1509, 50-1511
contracts for reclamation of open cut mining lands authorized, 50-1503
enforcement of contract by board, 50-1503
definition of terms, 50-1504
exemption of operations covered by other law, 50-1516
federal, state or other funds, receipt and expenditure by commission authorized, 50-1511
hearing of aggrieved persons by commission, procedure, 50-1515
inspection by commission of mining operation, access to lands, 50-1512
"open cut mining" defined, 50-1504
policy of state, 50-1502
reclamation contract with commission required of large open cut mining operators, 50-1507
amendment of contract to cover additional land, adjustment of fee, 50-1508
application for contract, contents, 50-1508
bond or security to accompany application, 50-1508
effective when signed, duration, 50-1510
fee to accompany application, 50-1508
issuance of contract by commission, 50-1508
operation without contract as misdemeanor, penalty, 50-1513
plan of operation to be submitted, 50-1508
public record open to inspection, 50-1510
requirements of contract, 50-1510
withdrawal of land from contract, adjustment of bond penalty, 50-1508
reclamation plan to be submitted by operator, requirements for commission approval, 50-1510
new or amended plan, submission to and approval by commission, 50-1510
operator failing to observe plan, order to cease mining, 50-1510
short title, 50-1501
state board of land commissioners to administer law, 50-1505
delegation of powers, duties and functions authorized, 50-1505
powers, duties and functions of commission, 50-1506

References are to Title and Section numbers

MINES AND MINING (Continued)
Pneumoconiosis as occupational disease, definitions, 92-1303, 92-1315.1—See OCCUPATIONAL DISEASE ACT, Pneumoconiosis
Real estate brokers' act inapplicable to dealings in mineral interest, 66-1926
Reclamation of mining lands
administration of act by board of state lands and investments, 50-1204
annual report by permittee, 50-1212
appeal to appeals board, 50-1216
judicial review of appeals board decision, 50-1217
bond or deposit required of permittee, terms and conditions, 50-1211
developer to furnish bond, 50-1207
confidential nature of information received, 50-1221
co-operation with governmental and private agencies, 50-1206
deficiencies in reclamation activities, notice and rectification, 50-1213
definition of terms, 50-1203
denial of permit, grounds for, 50-1214
appeal to appeals board, 50-1216
judicial review, 50-1217
resubmission with different reclamation plan, 50-1215
development permit required, procedure and requirements, 50-1207
performance bond, 50-1211
employment of personnel for administration of act, 50-1204
exploration license required, procedure and requirements, 50-1207
federal lands, exemption of operations on, 50-1223
grants and funds, acceptance and use, 50-1206
information activities of board, 50-1205
confidential information not to be disclosed, 50-1221
inspection of permit areas to determine compliance, 50-1213
judicial review of administrative actions, 50-1217
appeal to supreme court, 50-1218
legislative findings, 50-1201
operating permit required, procedure and requirements, 50-1208
inspection of mining site and issuance of permit, 50-1210
penalties for violations, 50-1222
confidential information, unauthorized disclosure, 50-1221
small mine owners and operators, violations by, 50-1220
plan of reclamation, required contents, 50-1209
modification of plan, 50-1210
previously performed work exempt, 50-1219
purposes of act, 50-1202
research and experimental activities, 50-1205
rules and regulations, 50-1204
sample collectors exempt, 50-1224
small mining operations exempt on agreement, 50-1220
Reclamation of open-cut and strip-mined land, advisory committee abolished, 82A-1512
Resource indemnity trust account tax, 84-7001 to 84-7013—See TAXATION
Right of way to mines and mining claims
alternate facilities to be constructed when roads and alleys condemned for open pit mining, 50-814
residential property near open pit mine
agreement to purchase prerequisite to condemnation of right of way, 50-813
measure of compensation on condemnation, 50-815
notice to owners of intent to condemn, 50-816
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Safety in mines other than coal mines
access of industrial accident board to premises, 50-102
civil remedies for enforcement of act, 50-118
definition of terms, 50-119
employment of inspectors by industrial accident board, 50-101
inspections and investigations by board, 50-102
mines to which provisions applicable, 50-108

MINES AND MINING (Continued)
Safety in mines other than coal mines (Continued)
order for abatement of hazard or closing of mine, 50-102
penalties for violation of act, 50-118
reports by mine operators, 50-108
review of board orders, 50-102
Strip coal mining license tax, 84-1302 to 84-1304
Strip mining regulation, 50-1034 to 50-1057
board of land commissioners, orders, rules, hearings, 50-1037
conservation and prevention of waste of strippable coal, 50-1401 to 50-1409
appeal to board from disapproval of plan, hearing, procedure, 50-1406
approved plan required of operator, period for which effective, 50-1404
civil penalty for operation without or in noncompliance with plan, 50-1407
definition of terms, 50-1403
policy and purposes of law, 50-1402
procedure for hearings and appeals, 50-1408
rules of board to prevent waste, 50-1406
short title, 50-1401
"strippable coal" defined, 50-1403
submission of plan to department, review, approval or disapproval, procedure, 50-1405
violation of board rule as misdemeanor, 50-1407
definition of terms, 50-1036
department of state lands to administer law, duties and functions, 50-1038
federal, state or other funds, board authorized to accept, 50-1053
permit required for strip mining, application, contents, fee, bond, 50-1039
amendment of permit increasing or reducing acreage, procedure, fee, 50-1040
detailed plans to accompany application, contents, 50-1039
maps to accompany application, 50-1039
refusal of permit, grounds, 50-1042
suspension or revocation, notice of noncompliance, procedure, 50-1050
policy of state, legislative findings, 50-1035
procedure for hearings and appeals, 50-1057
prospecting permit required, application, contents, fee, 50-1041
documents to accompany application, 50-1041
prompt reclamation, when required, 50-1041 (5)
reclamation and revegetation bond required, 50-1041 (4)
refusal of permit, grounds, 50-1042
reclamation and revegetation of affected land required, 50-1043
alternative plans authorized, board approval required, notice, 50-1044
annual report of reclamation work required of operator, map to accompany report, 50-1049
area strip mining required, purpose, 50-1044
commencement of reclamation, time for, 50-1046
operations to be kept current, 50-1046
original contour of land, approximate restoration required, 50-1044
plan to be submitted to department, procedure for approval, 50-1043
planting of vegetation, 50-1045
planting report required prior to expiration of permit, contents, release of bond, 50-1047
reinstatement of revoked permit or issuance of subsequent permit, requirements for, 50-1050
release of bond upon completion of reclamation and revegetation, 50-1044
specific duties of operator, 50-1043
topsoil to be preserved, 50-1044
vegetation planted as property of landowner, 50-1048
water runoff to be controlled, 50-1044
reclamation work by board authorized, available funds for, 50-1053, 50-1054
short title, 50-1034
strip mining and reclamation fund created, purpose, 50-1052
fees, forfeitures and other receipts credited to fund, 50-1052
reclamation by board, appropriation from fund for, 50-1054
unexpended balance not to lapse, 50-1052

MINES AND MINING (Continued)
Strip mining regulation (Continued)
"strip mining" defined, 50-1036
successive operators, when first operator released, 50-1051
violations, civil and criminal remedies, 50-1055, 50-1056
civil penalties, 50-1056
damages, action by injured party, 50-1055
mandamus to compel enforcement, 50-1055
misdemeanor, penalty, 50-1056
other remedies available, 50-1055

MISREPRESENTATION
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MISTAKE
Uniform Commercial Code supplemented by general principles of law, 87A-1-103

MOBILE HOMES
Construction standards, compliance with required, 69-2123
definition of terms, 69-2121
fees for inspections, 69-2124
legislative findings and policy, 69-2122
rules and regulations establishing standards, 69-2122
testing of models, 69-2124
Fees in addition to registration and license fees, 32-3305
Taxation, 84-6601 to 84-6607—See TAXATION, Mobile homes

MOLOTOV COCKTAILS
Possession in public place with felonious intent as felony, penalty, 69-1932
definition, 69-1931

MONTANA RETAIL INSTALLMENT SALES ACT
Text of act, 74-601 to 74-612—See INSTALLMENT SALES ACT

MONTANA SALARY COMMISSION
Chairman and secretary, selection, 59-1402
Constitutional requirement, 1972 Const., XIII, 3
Creation, composition, terms of members, vacancies, 59-1401
Meetings of commission, quorum, 59-1402
Per diem and expenses of members, 59-1402
Salary recommendation of commission, 59-1404
Studies comparative with other states of salaries paid judicial, legislative and executive officers, 59-1403

MONTANA TRADE COMMISSION
Review of orders, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A

MORTGAGES
Abstracts recordable, 73-101.1
effect of recording, 73-201.1
Assignment of mortgage, recording and filing, 52-114
Chattel mortgages, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Definition of term, 19-103
Foreclosure
attorney fee to be allowed by court, 93-8613
deficiency judgment, docketing, 93-6001
parties to foreclosure action, 93-6001
power of sale contained in mortgage, alternatives available, 93-6004
advertising required for sale under power, 93-6005
attorney fees allowed to mortgagee, 93-6007
redemption of property sold under power, 93-6006
proceeds of sale, application, 93-6001
sale of property directed by court, 93-6001

MORTGAGES (Continued)
Negotiability of note secured by mortgage, 93-6010
Real and personal property, mortgages covering both, 52-212
Small tract financing act, 52-401 to 52-417—See TRUST INDENTURES
Subordination of mortgage agreement, recording, 52-116
Uniform Commercial Code, conflicts with general mortgage law, 52-117
Unit ownership property, attachment and release of mortgages against, 67-2324
  blanket mortgages, release on conveyance of units, 67-2323
  individual units, encumbering permitted, 67-2304
Validation of defectively executed instruments, 73-207 et seq.
Waiver of mortgage in favor of subsequent interest, recording, 52-116

MORTICIANS AND FUNERAL DIRECTORS
Autopsies ordered by coroner, liability of mortuary limited, 95-813
Cremated remains delivered to mausoleum-columbarium authority, exemption from liability on, 9-604
Definition of terms, 66-2701
Fees payable to state board of morticians
  annual license fee of morticians, 66-2711
  deposit and use of fees, 66-2706
  examination fee for morticians, 66-2709
  funeral directing annual fee, 66-2707
  intern mortician's license fee, 66-2710
  mortuary license, 66-2713
Inspection of mortuary, 66-2713
Insurers, prohibited relations with, 40-3521
Licenses
  annual renewal of mortician's license, 66-2711
  examination of applicants for mortician's license, 66-2709
  funeral director's license issued to previous licensees, 66-2707
  intern mortician's license, 66-2710
  mortuary license, 66-2713
  previously licensed embalmers, licensing as mortician, 66-2711
  qualifications for mortician's license, 66-2708
  reciprocal licensing without examination, 66-2712
  required for practice of embalming or mortuary science, 66-2708
  revocation or suspension of license
    appeal to district court from decision of board, 66-2716
    grounds for revoking or suspending funeral director's license, 66-2714
    hearing and notice on suspension or revocation, 66-2715
    mortuary license, grounds for suspension or revocation, 66-2713
Rules and regulations, adoption by board, 66-2704
Sanitary standards for mortuary, 66-2713
State board of morticians renamed and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  appointment of members, 66-2702
  compensation of members, 66-2703
  continuation in office of board members, 82A-1606
  employment of personnel for board, 66-2705, 82A-1604
  legal assistance in hearings by board, 82A-1604
  meetings of board, 66-2704
  officers of board, 66-2703
  quorum of board, 66-2704
  retention of functions by board, 82A-1605
  term of office of members, 66-2702
Violation of act as misdemeanor, 66-2717

MOTELS
  See HOTELS AND MOTELS

MOTIONS
Ambiguous pleadings, motion for more definite statement, M. R. Civ. P., Rule 12(e)
Appearance, filing of motion by defendant constituting, 93-8505

MOTIONS (Continued)
Application for order to be by motion, M. R. Civ. P., Rule 7(b)
Consolidation of defenses required, M. R. Civ. P., Rule 12(g)
Criminal cases, 95-1701 to 95-1710—See CRIMINAL PROCEDURE, Pretrial motions
appeals, requirements for motions, 95-2415
filing with judge, 95-2413
new trial, motion for, 95-2101
post-conviction hearing, time for motion, 95-2604
Defenses permitted by motion, M. R. Civ. P., Rule 12(b)
Directed verdicts, motion for, M. R. Civ. P., Rule 50
Evidence presented on hearing of motions, M. R. Civ. P., Rule 43(e)
Failure to state claim raised by motion, M. R. Civ. P., Rule 12(b)
Filing with court required, M. R. Civ. P., Rule 5(d)
Findings of fact unnecessary in ruling on motion, M. R. Civ. P., Rule 52(a)
Form of motion prescribed, M. R. Civ. P., Rule 7(b)
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 15, 19, 20
Hearing and determination before trial, M. R. Civ. P., Rule 12(d)
Insufficiency of process raised by motion, M. R. Civ. P., Rule 12(b)
Judgment notwithstanding the verdict, motion for, M. R. Civ. P., Rules 50(b)-(d)
conditional rulings on grant of motion, M. R. Civ. P., Rule 50(c)
denial of motion, M. R. Civ. P., Rule 50(d)
Judgments on pleadings, motion for, M. R. Civ. P., Rule 12(c)
Jurisdictional defenses raised by motion, M. R. Civ. P., Rule 12(b)
Mistaken judgment or order, grounds and procedure for relief from, M. R. Civ. P., Rule 60
New trial, motion for, M. R. Civ. P., Rule 59
Parties, defects raised by motion, M. R. Civ. P., Rule 12(b)
Relief from judgment or order, motions for, M. R. Civ. P., Rules 60(a), (b)
time for hearing and determining motions, M. R. Civ. P., Rule 60(c)
Service on parties, when required, M. R. Civ. P., Rule 5(a)
Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
Summary judgment, motion for, M. R. Civ. P., Rule 56
Time allowed for hearing of motions, M. R. Civ. P., Rule 6(d)
Time allowed for pleading after ruling on motions, M. R. Civ. P., Rule 12(a)
Waiver of defenses by failure to move, M. R. Civ. P., Rule 12(h)

MOTORBOATS
Accidents
accident report form, 69-3512
duty of operators to render aid, 69-3512
investigation by sheriff, 69-3512
Boat liveries
record of persons hiring, required to be kept, 69-3507
safety equipment required, 69-3507
Boats with operative federal approved numbering system, 69-3504
Civil liability of owner, 69-3515
Definitions, 69-3502
Enforcement of act, 69-3517
Garbage, refuse or waste, discharge from boat prohibited, 69-3508.1
equipment required on boats, 69-3505
penalty for violation, 69-3508.2
Gasoline tax money allocated to park improvement where boating allowed, 32-2601
Landowner's restricted liability to gratuitous licensee for boating, 67-808
definition of recreational purposes, 67-809
Legislative policy, 69-3501
Liability of owner for negligence, 69-3515
Litter Control Law, 94-3335 to 94-3344—See LITTER CONTROL LAW
Numbering
application for number, 69-3504
change of address, 69-3504
decals, 69-3504.1
exemptions from, 69-3506
fee for application, 69-3504
manufacturers or dealers, 69-3504

MOTORBOATS (Continued)
Numbering (Continued)
operation of unnumbered motorboats or vessels prohibited, 69-3503
painting or attaching of number to boat, 69-3504
period of time number to remain in effect, 69-3504
transfer of ownership of boat, 69-3504
Operating, prohibited actions, 69-3508
Operation of unnumbered motorboats or vessels prohibited, 69-3503
Overloading prohibited, 69-3511
Overpowering prohibited, 69-3511
Penalty for violations of act, 69-3518
Prohibited operation, 69-3508
Property tax on vessel, proof of payment required, 69-3504
Restricted areas, 69-3510
Right-of-way, 69-3509
Rules and regulations, 69-3516
Safety education program to be co-ordinated by board state wide, 69-3516.1
Safety equipment required, enumeration, 69-3505
Toilet facilities on boats, specifications, 69-3505
Transfer of ownership, 69-3504
Transmittal of information, 69-3513
Violations of act, penalty, 69-3518
Water-skis or surfboards, hours during which operation prohibited, 69-3514

MOTOR CARRIERS
Acts deemed prima facie indication of status as motor carrier, 8-121
Agricultural commodities, vehicles used for carriage exempt, 8-101
Board of railroad commissioners, regulatory powers, 8-103
Certificate of convenience and necessity
class A carriers, 8-108
class B carriers, 8-109
class C carriers, 8-110, 8-111
federal contract for transportation, certificate issued on, 8-110, 8-111
leasing of certificate, 8-103.3
livestock transportation, 8-101.2
Civil penalty for violations, 8-119
Common carrier motor transportation system to be encouraged 8-103
Definition of terms, 8-101
Exemptions generally, 8-101 to 8-101.2
Field inspectors, employment and powers, 8-103
Highway construction vehicles exempt, 8-101
Interchange of equipment authorized, 8-103.2
Leasing of power equipment authorized, 8-103.1
Livestock transportation
certificate required for commercial transportation, 8-101.2
farmers and ranchers exempt from regulation, 8-101.1
Logging or mining vehicles exempt, 8-101
Municipal taxes and fees, restriction on, 32-3206
Penalty for violations of act, 8-119
Rate regulation
board's duty to fix rate, 8-104.1
changes in schedule, approval by board required, 8-104.2
procedure for approval, 8-104.5
deviation from schedules prohibited, 8-104.3
differences between classes of carriers to be recognized, 8-103
discrimination prohibited, 8-104.4
filing of schedules with board, 8-104.2
investigation of complaints, 8-104.4
preferences prohibited, 8-104.4
recovery of excess charges, 8-104.6
suspension of schedules by board, 8-104.5
School bus operation exempt from regulation, 8-101
Securities, when exempt from securities act, 15-2013

References are to Title and Section numbers

MOTOR CARRIERS (Continued)
Supervisor of motor carriers, appointment, qualifications and duties, 8-103
Suspension of intrastate operating authority upon petition of carrier, 8-107.1
absence of public convenience and necessity, evidence required, 8-107.1
presumption from suspension of twelve consecutive months, 8-107.2
period of suspension limited, 8-107.1
Temporary authority for emergency service, 8-131

MOTOR VEHICLES
Abandoned vehicles
litter, abandoned vehicle included in definition for purposes of Litter Control Law, 94-3337
notice to owner of removal, 53-903
penalty for violation of act, 53-909
prohibition against leaving vehicles on highways or public property, 53-901
reclaiming vehicles removed by officers, 53-904
removal of vehicles by law enforcement agencies, 53-902
sale of vehicle if not reclaimed, 53-905
certificate of ownership, issuance to buyer, 53-907
certificate of sale, issuance and contents, 53-906
proceeds of sale, disposition, 53-908
return of sale by sheriff, 53-908
streams, use of junked vehicles for flood control or reinforcement of banks unlawful, penalty, 94-3552.1, 94-3552.2
Accident reports, when required, 32-1208
Arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123
Brakes required on vehicles, 32-21-143.1
hydraulic brake fluid, standards and regulation, 32-21-143.4
maintenance and adjustment of brakes required, 32-21-143.3
performance required of brakes, 32-21-143.2
Campers, compliance with construction standards required, 69-2123
definition of terms, 69-2121
fees for inspections, 69-2124
legislative findings and policy, 69-2122
rules and regulations establishing standards, 69-2122
tax-paid decal to be displayed on vehicle, application, issuance, fee, 53-645
annual application and renewal, 53-647
definition of "camper," 53-644
violation as misdemeanor, penalty, 53-646
testing of models, 69-2124
Dealers
amount of fees payable for plates, 53-122
application for license, contents, filing and verification, 53-118
bond required of dealer, 53-118
building or lot required of dealer, 53-118
definition of dealer, 53-133
demonstration permits for trucks and trailers, 53-118.6 to 53-118.10—See Demonstration of trucks and trailers, below
investigation of license applications, 53-118
penalty for engaging in business without license, 53-118
plates assigned to dealers, description and use, 53-118
records of purchases and sales required of dealers, 53-118
used cars, certificate as to previous ownership to be delivered, 53-133
Demonstration of trucks and trailers, permit required, 53-118.6
application for permit, 53-118.7
dealer's plate, display required, 53-118.6
duration of permit, 53-118.8
fee required for permit, 53-118.7
disposition of fees, 53-118.10
form of permit and application, 53-118.7
lease of vehicle under permit prohibited, 53-118.8
number of permits authorized on each application, 53-118.7
operation of vehicle under permit, 53-118.8
violation of provisions as misdemeanor, 53-118.9

References are to Title and Section numbers

MOTOR VEHICLES (Continued)
Division of motor vehicles created, 82A-1204
functions, 82A-1205, 82A-1206
Drive-away and tow-away transporters
annual permit fee payable, 32-3401
carrier fees additional to transporter fees, 32-3404
disposition of fees collected, 32-3403
exemption from payment of transporter fees, 32-3406
plates and devices issued to transporters, 32-3401
trip fees payable by transporters, 32-3402
truck and trailer fees, exemption from payment, 32-3405
Driving under influence of liquor or drugs unlawful, penalty, 32-2142
implied consent to test for alcohol, 32-2142.1
presumptions as to intoxication from test results, 32-2142
suspension of license for refusal to submit to test, 32-2142.1
judicial review of proceedings, 32-2142.2
test for alcohol, procedure for administration, 32-2142.3
Emergency vehicles, audible and visible signals on, 32-21-132
Equipment required on commercial tow cars, 32-21-161
penalty for violation, 32-21-162
Equipment Safety Compact ratified, text, 32-21-166
accounts of safety commission, inspection by state examiner, 32-21-174
budget of safety commission, 32-21-173
commissioner from state to serve on safety commission, designation, 32-21-169
co-operation of governmental agencies with safety commission, 32-21-171
documents of commission to be filed with highway patrol board, 32-21-172
governor is executive head for purposes of compact, 32-21-175
legislative approval required for commission rules and regulations, 32-21-168
legislative findings on equipment safety, 32-21-167
notices to be given to highway patrol supervisor, 32-21-172
retirement agreements for commission employees, 32-21-170
statutory requirements continued in force, 32-21-168
Fees payable in addition to registration and license fees
administrative costs retained by county treasurer, 32-3204
alternative additional fees on truck-trailer combinations, 32-3302.1
buses, amounts payable, 32-3307
credit of fees to highway commission, 32-3205
expiration date of fees, 32-3202
farm and ranch vehicles, amounts payable, 32-3306
foreign registered vehicles, amount of fees payable, 32-3312
temporary permits for operation of foreign vehicles, 32-3313
time for payment of fees by nonresidents, 32-3314
half year fee payable after July 1, 32-3201
municipal fees, restriction on, 32-3206
penalty for operation without payment of fees, 32-3316
exceeding weight for which registered, 32-3317
quarterly payment of fees, when permitted, 32-3308
failure to make quarterly payment, misdemeanor, impoundment of vehicle, 32-3309
remittance by county treasurer to state treasurer, 32-3204
replacement vehicle, transfer of certificate, registration or license to, 32-3203
sales tax on new passenger vehicles, 32-3315
soil conservation and land leveling vehicles, special rate, 32-3306
three-unit combination fee in lieu of other fees, 32-3310
time for payment of fees, 32-3201
trailers and semitrailers
amount payable as fees, 32-3302
co-operative association vehicles exempt, 32-3306
farm and ranch trailers, percentage payable, 32-3306
gross weight over 42,000 pounds, additional amounts payable, 32-3303
house trailers, amount of fee, 32-3305
livestock trailers, percentage payable, 32-3304
log trailers, percentage payable, 32-3304

References are to Title and Section numbers

MOTOR VEHICLES (Continued)
Fees payable in addition to registration and license fees (Continued)
trailers and semitrailers (Continued)
low-boy trailers, percentage payable, 32-3304
pole trailers, percentage payable, 32-3304
transfer of certificate, registration or license, 32-3203
trucks and truck-tractors
amount of fees payable, 32-3301
concrete mixer trucks and trailers, percentage payable, 32-3304.1
co-operative association vehicles exempt, 32-3306
farm and ranch trucks, percentage payable, 32-3306
gross weight over 42,000 pounds, additional amounts payable, 32-3303
livestock trucks, percentage payable, 32-3304
log trucks, percentage payable, 32-3304
low-boy trailers, trucks used to haul, 32-3304
Fenders required on vehicles, 32-21-149.1
Forest development roads, enforcement of traffic laws on, 32-2124.4
definition of terms, 32-2124.3
special service roads excepted, 32-2124.5
Guaranteed arrest bond certificates issued by automobile club or insurance company, 95-1121 to 95-1123
Identification numbers, alteration a misdemeanor, 53-139.1
Implements of husbandry, weight, size and distance traveled, limitations, 32-1123
Insurance
reimbursement for total loss of vehicle to be based on actual replacement value, 40-4404
restrictions on cancellation or nonrenewal, 40-4405 to 40-4412
uninsured motorist coverage added unless rejected, 40-4403
License plates
biennial plates and annual stickers, 53-106
collector's vehicles, 53-106.1
dealers' plates, 53-118
disabled veterans, issuance of license plates to, 53-106.8
one automobile, limitation to, 53-106.10
transfer of plates prohibited, 53-106.9
wrongful attempt to secure free plates as misdemeanor, 53-106.11
fees payable, disposition and use, 53-106, 53-122
foreign commercial vehicles, Montana plates required, 53-129
national guard plates authorized, 53-106.7
personalized license plates authorized, 53-148
application for plates, 53-152
color, design, numbering and lettering of plates, 53-149
fees for plates, disposition, 53-153
good taste and decency required in lettering, 53-152
issuance restricted to registered owner of vehicle, 53-151
misleading or duplication of license plates prohibited, 53-152
"personalized license plates" defined, 53-150
proportionally registered vehicles, plates or stickers issued for, 53-713
replacement of lost or damaged plates and validation devices, 53-120
specifications for plates, 53-106
transfer to another vehicle, 53-146
transfer to replacement vehicle, 53-106
Lien records, microfilming of expired, 53-101
Liens on vehicles, filing and foreclosure, 53-110
Livestock, collision with, negligence not presumed, 32-1020
Motorcycles, regulations for riding, 32-21-105, 32-21-105.1
headgear required for riders, 32-21-105.1 (1)
noise suppression device required on cycle, 32-21-105.1 (2)
Municipal power to tax and regulate vehicle yards, 11-918
Operation across public roads and highways not considered operation on roads, when, 32-2124.1
Parking facilities, municipal power to acquire and construct, 11-986

MOTOR VEHICLES (Continued)
Ports of entry and checking stations, establishment by highway commission authorized, 32-2419
co-operation of highway commission with other agencies required, 32-2421
major highways entering state, checking stations required, 32-2420
Radar arrests
admissibility in evidence, 32-2150.1
arrest without warrant authorized, 32-2150.2
erection of signs as prerequisite to arrests, 32-2150.3
posting of signs in municipalities, 32-2150.3
use of radar authorized, 32-2150.1
Reciprocal privileges of interstate fleets
agreements with other states authorized, 53-705
filing and availability of agreements, 53-722
base state registration reciprocity, 53-706
cancellation of reciprocity benefits, grounds for, 53-721
continuation in force of previously effective agreements, 53-723
definition of terms, 53-702
exemptions and benefits of agreements with other states, 53-706
extent of reciprocity, determination by reciprocity board, 53-708
identification plates or stickers, issuance, 53-713
leased vehicles, application to, 53-709
policy of state declared, 53-701
proportional registration
additional vehicles, registration, 53-715
agreements with other states, implementation by reciprocity board, 53-707
alternative methods of registration, 53-711
application for proportional registration, 53-712
cost of vehicle to be included in application, 84-729
denial in absence of reciprocity, 53-718
effect of registration, 53-713
fees for registration, computation, 53-712
general registration laws inapplicable, 53-720
identification plates or stickers, issuance, 53-713
joint audits of fleet owner's records, 53-719
new fleets, determination of fees payable, 53-717
other jurisdiction, registration of part of fleet in required, 53-714
records, preservation and availability, 53-719
taxation of proportionally registered fleets
apportionment on basis of in-state miles traveled, 84-727
assessment for property tax by state board, 84-727
collection of tax by state board, 84-730
cost of vehicle included in application for registration, 84-729
deposit and distribution of taxes, 84-731
partial year's tax payable, 84-727
rate of levy applied, 84-729
registration of vehicle, payment of tax condition precedent to, 84-727
situs in state of vehicles for purposes of taxation, 84-730
value of fleet, method of computation, 84-728
withdrawal of vehicles from registration, credits to account, 53-716
reciprocity board, creation, organization, and meetings, 53-703
abolition of board and transfer of functions, 82A-702
powers of board, 53-704
quasi-judicial functions transferred to board of highway appeals, 82A-705
reciprocity extended without agreement, 53-710
supplemental to other laws, 53-724
suspension of reciprocity benefits, grounds for, 53-721
Registrar's position abolished and functions transferred, 82A-1205
Registration
collector's vehicles, 53-106.1
fees payable, disposition and use, 53-106, 53-122
city road fund in population centers, amount and segregation, 32-3702
use of city road fund, 32-3703

MOTOR VEHICLES (Continued)
Registration (Continued)
fees payable (Continued)
city road fund other than in population centers, amount and segregation, 32-3704
use of city road fund, 32-3705
county motor vehicle fund, fees credited to, 32-3701
transfer of amounts remaining after segregation of city fund, 32-3702, 32-3704
use of moneys in county road fund, 32-3706
fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above
foreign commercial vehicles, registration required, 53-129
liens and security interests in vehicles, filing and satisfaction, 53-110
peace officers to enforce law, 53-102
reregistration following transfer of vehicle during year, 53-115
suspension under financial responsibility act, 53-422
tax on vehicles, procedure to insure payment, 53-114
transferred vehicles, new registration required, 53-147
used cars, dealer to deliver certificate as to previous ownership, 53-133
Regulations of licensing and taxing extends only to vehicles operated on public roads, 32-2124.2
Road blocks, arrests at, 95-618
Safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program
Safety responsibility act
insurance, limitations on termination or premium increase by carrier, 53-438
maximum duration of license suspension, 53-438
Sales tax on new motor vehicles, amount and payment required, 32-3315
School buses, 75-7001 to 75-7024—See SCHOOLS, Transportation of pupils
flashing red or amber lights on, 32-21-132
use of lights when stopped or preparing to stop, 32-2197
semiannual inspection, 32-21-155.1
Seat belts required in new vehicles, 32-21-150.1
penalty for violations, 32-21-150.3
specifications for seat belts, 32-21-150.2
Slow moving vehicles
reflectorized emblem required, 32-21-130
turn-out, when required on two-lane highway, 32-2147
Snowmobiles
accident reports, 53-1021
dealer registration of demonstration vehicles, fees, 53-1029
definition of terms, 53-1012
driving of game or livestock prohibited, exception, 53-1020
driving under influence prohibited, 53-1019
enforcement powers of officers, 53-1022
firing of arms from snowmobile prohibited, 53-1020
lights required for operation on public highways, 53-1018
lights required in hours of darkness, 53-1019
noise suppression, 53-1020
operators' qualifications, 53-1019
license required to operate on highways, 53-1018
penalties for violations, 53-1023
political subdivision licensing and fees prohibited, 53-1016
railroad right of way, restrictions on operation on, 53-1020
reckless driving prohibited, 53-1019
registration required, 53-1013
duplication of lost or mutilated certificate, 53-1015
publicly owned vehicles exempt, 53-1016
transfer of title or interest, 53-1014
roads and streets, restrictions on use, 53-1018
speed restriction, 53-1019
stolen and recovered snowmobiles, reporting and distribution of lists, 53-1017

MOTOR VEHICLES (Continued)
Snowmobiles (Continued)
tax-paid decals to be displayed, 53-1025
annual issuance of decals, 53-1026
application for decal, 53-1025
definition of terms, 53-1024
enforcement of act, 53-1028
lost, mutilated or illegible decal, issuance of duplicate, fee, 53-1025.1
penalty for violation, 53-1027
Speed contests, permission of authorities required, 32-2143.1
drag racing, penalty, 32-2143.2
Speed limits on federal-aid highways in urban areas, 32-2146
State-owned vehicles
annual summary of operating costs and history records, 53-519
assignment of vehicles to state agencies, 53-515
costs of operation paid by using agencies, 53-515
exemption of designated vehicles, 53-520
highway commission as custodian of pooled vehicles, 53-514
operating history records, 53-519
entries in record on trips, 53-518
personal use prohibited, 53-517
decal affixed to vehicle, 53-518
misdemeanor and dismissal from employment, 53-521
requisitions for purchases, contents and submission, 53-519
rules and regulations for operation, 53-515
travel regulations, 53-518
seal affixed to state-owned vehicle, 53-516
trip applications and records, 53-518
violation as misdemeanor, dismissal from employment, 53-521
Taxing of mobile homes, 84-6601 to 84-6607
Taxing of vehicles or fuels extends only to vehicles operated on public roads, 32-2124.2
Tax levy, assessment and registration provisions, 53-114, 84-406, 84-6008
Traffic rules and regulations
approach ramp, duty of driver entering or crossing highway from, 32-2173
automatic signals, meaning of signs, 32-2137
blind person, stopping for, 71-1307
penalty for violation, 71-1308
controlled access facilities, authority to regulate use, 32-4305
violation of regulations, penalties, 32-4311
county commissioners empowered to restrict traffic on county roads, 32-2802
fines, forfeitures and assessments, disposition, 31-114
operation of vehicles across public roads and highways not considered operation on roads, when, 32-2124.1
penalty assessment for driver education, 31-114
juvenile offenders, assessments levied against, 94-801-2
school buses, special regulations applicable to, 75-7007
school safety patrol, drivers required to stop for, 32-2177
sign manual, state highway commission to adopt, 32-2133
signs, state highway commission to place and maintain, 32-2134
speed contests, permission of authorities required, drag racing, penalty, 32-2143.2
speed limits on federal-aid highways in urban areas, 32-2146
traffic lights, meaning of signals, 32-2137
"yield" sign, duty of driver approaching, 32-2174
Traffic safety program, 32-4601 to 32-4607—See HIGHWAYS, BRIDGES AND FERRIES, Traffic safety program
Transfer of title or interest
dealer transactions, change of registration and passage of title, 53-109.1
new vehicles, sticker provisions applicable to, 53-109.2
time allowed for registration by purchaser, 53-109.4
forwarding of certificates to county treasurer and registrar, 53-109
new registration required of purchaser, 53-147
temporary windshield sticker issued when registration papers unavailable, 53-109.3
Transit permits for movement of unregistered vehicles, 53-119.1

MOTOR VEHICLES (Continued)
Trucks, tractors and trailers
additional fees payable, 32-3301 to 32-3317—See Fees payable in addition to registration and license fees, above
combination length and weight restrictions, 32-1123
demonstration permits, 53-118.6 to 53-118.10—See Demonstration of trucks and trailers, above
fleet registration, 53-701 to 53-724—See Reciprocal privileges of interstate fleets, above
hauled vehicles exempt from requirements, 53-638.1
owner's name and certificate number to be displayed, 53-801
dealers and manufacturers exempt, 53-802
penalty for violations, 53-803
special mobile equipment defined, 53-642
assessment of taxes, time of, 84-406
identification plate required, annual fee, 32-3707
weight violations, disposition of fines and penalty assessments, 32-1131
Unlawful operation by child under 18
concurrent jurisdiction of district and inferior courts, 32-21-163
court learning of unlawful operation, proceedings, 32-21-165
impounding the vehicle, when, 32-21-163
penalty, 32-21-163
summoning of child, 32-21-164
Wrecking facilities, 69-6801 to 69-6810
annual payment to county by department, limit, 69-6807 (4)
crushing and recycling of junk vehicles to be contracted for by department, disposition of moneys received, 69-6806
definition of terms, 69-6801
fees, deposit, disposition, 69-6807
report of department to legislature, 69-6807 (3)
special junk vehicle disposal fee, assessment, 69-6807 (2)
injunction to enforce act, 69-6810
license required for maintenance or operation of wrecking facility, application, fee, display, expiration, 69-6802
denial, suspension or revocation of license, grounds, 69-6809
motor vehicle graveyards to be provided by county, joint operation authorized, 69-6805
disposition of junk vehicle by delivery to graveyard, 69-6806
plan and budget to be submitted to department, 69-6805
possession of junk vehicles as prima facie evidence of wrecking facility, 69-6803
records required of facility, 69-6804
rules to be adopted for enforcement of law, 69-6808
violation as misdemeanor, 69-6810

MOUNTAIN VIEW SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

MUNICIPAL COURTS
Criminal jurisdiction, 95-303

MUSEUMS
Historical independent of other institutions, 44-518

N

NARCOTIC DRUGS
Dangerous Drug Act
criminal provisions
altering labels on dangerous drugs, 54-135
penalty, 54-136
fraudulently obtaining dangerous drugs, 54-134
penalty, 54-136
jurisdiction of prosecutions, exclusive in district court, 54-138
possession of dangerous drugs, 54-133

References are to Title and Section numbers

NARCOTIC DRUGS (Continued)
Dangerous Drug Act (Continued)
criminal provisions (Continued)
rehabilitative treatment, 54-137
sale of dangerous drugs, 54-132
justices' courts, no jurisdiction, 95-302
Schools to give courses in drug abuse, 75-8904
dependency commission to consult and advise, 75-8905
purpose of requirement, 75-8901
teacher preparation, 75-8902, 75-8903
State institution inmates, furnishing to as misdemeanor, penalty, 80-1418

NATURALIZATION
District court power of naturalization, 1972 Const., VII, 4

NATURAL RESOURCES
Depletion and degradation, provision for preventive remedies, 1972 Const., IX, 1
Reclamation of lands, 1972 Const., IX, 2
Water rights, 1972 Const., IX, 3

NATURAL RESOURCES AND DEVELOPMENT COUNCIL
Abolition of council, 82A-1511

NEGLIGENCE
Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
Emergency care rendered at scene of accident, restriction on liability for, 17-410
Medical malpractice, statute of limitations, 93-2624

NEGOTIABLE INSTRUMENTS
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NEWSPAPERS
Freedom of speech, expression, and the press, 1972 Const., II, 7
Investment advice exempt from securities act, 15-2004
Libel, notice to publisher and opportunity to correct, 64-207.1
Protection of sources of information, 93-701-4

NEW TRIAL
Criminal cases, motion for, 95-2101
appeal, authority to order new trial, 95-2426
bail, provisions for, 95-1119
Grounds and procedure, M. R. Civ. P., Rule 59
Stay of proceedings to enforce judgment pending motion for new trial, M. R. Civ. P. Rule 62(b)

NONPROFIT CORPORATION ACT
Actions by and against corporations
involuntary dissolution, commencement of action, 15-2353
survival of remedy after dissolution, 15-2362
Amendment of articles of incorporation—See Articles of incorporation, amendments, below
Annual reports of domestic and foreign corporations, 15-2381
failure to file, penalty, 15-2385
filing of report, 15-2382
fee for filing, 15-2383
Appeal from ruling or decision of secretary of state, 15-2388
Applicability of Religious Corporation Sole Act, 15-2402
Application of act, 15-2303
Articles of dissolution—See Dissolution, articles of dissolution, below
Articles of incorporation
amendments
disapproval by secretary of state, appeal to district court, 15-2388
merger or consolidation of corporations, 15-2342

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Articles of incorporation (Continued)
amendments (Continued)
procedure to amend, 15-2334
right to amend, 15-2333
articles of amendment
certificate of amendment, issuance by secretary of state, 15-2336
effect of certificate, 15-2236
fee for issuing, 15-2383
execution by corporation, 15-2335
fee for filing, 15-2383
form and contents, 15-2335
disapproval by secretary of state, appeal to district court, 15-2388
fee for filing, 15-2383
filing of articles, 15-2330
foreign corporation, amendment to articles, filing, 15-2373
form and contents, 15-2329
greater voting requirements, effect, 15-2391
restated articles of incorporation, 15-2337
certificate of restatement, issuance
effect, 15-2337
fee, 15-2383
filing, fee, 15-2337, 15-2383
waiver of notice requirements, 15-2392
Books and records, 15-2325
Bylaws
adoption by board of directors, contents, 15-2312
power to alter, amend or repeal, 15-2312
definition, 15-2302
Certificate of incorporation
fee for issuing, 15-2383
issuance by secretary of state, 15-2330
effect of issuance, 15-2331
Committees of board of directors, appointment and powers, 15-2321
Consolidation—See Merger or consolidation, below
Definitions, 15-2302
Directors
bylaws, adoption, modification, 15-2312
committees, appointment and powers, 15-2321
consent to action taken without a meeting, 15-2393
election, 15-2318
false statements in documents, penalty, 15-2386
liquidation of assets and business of corporation, grounds for action, 15-2354
loans from corporation prohibited, 15-2327
management of corporation, 15-2317
meetings, place and notice, 15-2322
consent to action without a meeting, 15-2393
waiver of notice, 15-2322, 15-2392
nonliability for corporate obligations, 15-2311
number, 15-2318
listing in articles of incorporation, 15-2329
officers of corporation as ex officio members of board, 15-2323
organization meeting, 15-2332
qualifications, 15-2317
quorum, 15-2320
removal from office, 15-2318
survival of remedy after dissolution, 15-2362
term of office, 15-2318
vacancies, filling of, 15-2319
Dissolution
appeal from disapproval by secretary of state, 15-2388
articles of dissolution, 15-2349
execution, form and contents, 15-2349
fee for filing, 15-2383
filing with secretary of state, 15-2350

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Dissolution (Continued)
attorney general, notice from secretary of state as to corporations subject to involuntary dissolution, 15-2352
commencement of action and procedure, 15-2352
involuntary dissolution
grounds for, 15-2351
liquidation—See Liquidation, below
notice to attorney general by secretary of state of corporations subject to, 15-2352
venue and process, 15-2353
survival of remedy after dissolution, 15-2362
voluntary dissolution, 15-2345
articles of dissolution, filing, 15-2349, 15-2350
assets due unknown persons, deposit with state treasurer, 15-2361
certificate of dissolution, 15-2350
distribution of assets, 15-2346
plan of distribution, 15-2347
revocation of voluntary proceedings, 15-2348
Dividends prohibited, 15-2326
Enforcement by secretary of state, 15-2387
Evidence, certificates and certified copies issued by secretary of state to be received, 15-2389
Fees
certified copies, 15-2384
filing documents and issuing certificates, 15-2383, 15-2384
Foreign corporations
actions by and against corporations, 15-2364
failure to obtain certificate of authority, effect of, 15-2380
service of process, 15-2372
admission of foreign corporation, 15-2363
annual report required, contents, 15-2381
failure to file, penalty, 15-2385
filing of report, 15-2382
fee, 15-2383
application of act, 15-2303
articles of incorporation, amendment, filing, 15-2373
filing fee, 15-2383
certificate of authority
amended certificate, requirements for securing, procedure, 15-2375
application fee, 15-2383
application, contents, execution, 15-2367
filing of application, 15-2368
failure to obtain certificate, effect, 15-2380
fee for issuing, 15-2383
issuance of certificate, effect, 15-2368, 15-2369
limitations on issuance, 15-2363
required to transact business in state, 15-2363
revocation of certificate of authority
appeal from secretary of state, 15-2388
grounds, 15-2378
issuance of certificate of revocation, 15-2379
definition, 15-2302
merger of foreign corporation authorized to do business in state, 15-2374
articles of merger, fee for filing, 15-2383
merger or consolidation with domestic corporations, 15-2343
name of corporation
change of name, 15-2366
reservation of right to exclusive use, 15-2309
restrictions on contents of name, 15-2365
powers of foreign corporation, 15-2364
registered agent required, 15-2370
change of registered agent, 15-2371
registered office required, 15-2370
change of registered office, 15-2371

References are to Title and Section numbers

NONPROFIT CORPORATION ACT (Continued)
Foreign corporations (Continued)
service of process on foreign corporation, 15-2372
withdrawal of foreign corporation
application for withdrawal, contents, 15-2376
filing fee, 15-2383
filing of application, 15-2377
certificate of withdrawal, requirements for, issuance, 15-2376, 15-2377
Health service corporations, 15-2304
Incorporation
articles of incorporation—See Articles of incorporation, above
certificate of incorporation, 15-2330, 15-2331
Incorporators, 15-2328
listing in articles of incorporation, 15-2329
organization meeting, calling of, 15-2332
Invalidity of part of act, effect of, 15-2397
Liquidation
assets due unknown persons, deposit with state treasurer, 15-2361
creditors, grounds for action for liquidation, 15-2354
filing of claims and notice, 15-2357
decree of dissolution
effect of decree, 15-2359
entry of decree by court, 15-2359
filing of decree, 15-2360
directors, grounds for action for liquidation, 15-2354
discontinuance of proceedings, 15-2358
grounds for liquidation of assets and business of corporation, 15-2354
jurisdiction of district courts, 15-2354
members, grounds for action for liquidation, 15-2354
procedure
liquidation by court, 15-2355
voluntary dissolution, 15-2346, 15-2347
receivers
appointment by court, 15-2355
authority of receivers, 15-2355
compensation, 15-2355
expenses, payment from assets or proceeds of sale, 15-2355
qualifications, 15-2356
Loans to directors and officers prohibited, 15-2327
Members
classes of members, designation, election or appointment, qualifications, 15-2311
consent to action taken without a meeting, 15-2393
corporation may have no members, 15-2311
definition, 15-2302
liquidation of assets and business of corporation, grounds for action, 15-2354
meetings
annual meeting of members, time and place, 15-2313
consent to action taken without a meeting, 15-2393
quorum, 15-2316
special meetings, 15-2313
voting rights of members, 15-2315
articles of incorporation to control, 15-2391
written notice required, 15-2314
waiver, 15-2392
membership certificates, issuance by corporation, 15-2311
nonliability for corporate obligations, 15-2311
organization meeting, 15-2332
survival of remedy after dissolution, 15-2362
Merger or consolidation
appeal from disapproval by secretary of state, 15-2388
articles of merger or consolidation
execution by each corporation, 15-2341
filing in office of secretary of state, 15-2341
fee for filing, 15-2383
form and contents, 15-2341

NONPROFIT CORPORATION ACT (Continued)
Merger or consolidation (Continued)
certificate of consolidation
effect of issuance, 15-2342
issuance by secretary of state, 15-2341
fee, 15-2383
certificate of merger
effect of issuance, 15-2342
issuance by secretary of state, 15-2341
fee, 15-2383
consolidation, procedure for, 15-2339
domestic and foreign corporations, 15-2343
foreign corporation authorized to do business in state, filing of articles of merger, 15-2374
merger, procedure for, 15-2338
new corporation, rights and liabilities, 15-2342
plan for merger or consolidation
abandonment of plan, 15-2340
approval by members, 15-2340
separate existence of parties to plan ceases, 15-2342
surviving corporation, rights and liabilities, 15-2342
Name of corporation
reservation of right to exclusive use, 15-2307
fee for filing application, 15-2383
notice of transfer of reserved name, fee for filing, 15-2383
restrictions on contents of name, 15-2307
Officers, enumeration and general powers, 15-2323
appointment or election, 15-2323
ex officio members of the board of directors, 15-2323
false statements in documents, penalty, 15-2386
loans from corporation prohibited, 15-2327
nonliability for corporate obligations, 15-2311
removal from office, 15-2324
Organization meetings, notice, 15-2332
Powers of corporation
general powers enumerated, 15-2305
ultra vires as a defense, 15-2306
unauthorized assumption of corporate powers, 15-2394
Purposes for which organized, 15-2304
Receivers—See Liquidation, receivers, above
Registered agent required, 15-2308
change of registered agent, 15-2309
statement of change, fee for filing, 15-2383
listing in articles of incorporation, 15-2329
resignation of agent, 15-2309
Registered office required, 15-2308
change of registered office, 15-2309
statement of change, fee for filing, 15-2383
listing in articles of incorporation, 15-2329
Repeal of prior acts, effect of, 15-2396
Reports
annual report—See Annual reports of domestic and foreign corporations, above
forms to be prescribed by secretary of state, 15-2390
Reservation of power to amend, repeal or modify, regulatory act, 15-2395
Sale, lease, exchange, or mortgage of assets, 15-2344
Secretary of state
appeal from ruling or decision of secretary of state, 15-2388
application to reserve corporate name, filing, 15-2307
articles of amendment
certificate of amendment, issuance, effect, 15-2336
filing, 15-2335
articles of dissolution, filing, certificate, 15-2350
articles of incorporation, filing, 15-2330
certificate of incorporation, issuance of, 15-2330, 15-2331
certified copies, fees for issuing, 15-2384

NONPROFIT CORPORATION ACT (Continued)
Secretary of state (Continued)
change of registered office or registered agent, filing of statement, 15-2309
evidence, certificates and certified copies issued by secretary of state to be received, 15-2389
fees for filing documents and issuing certificates, 15-2383, 15-2384
foreign corporations
certificate of authority
amendment, procedure, 15-2375
issuance, 15-2368, 15-2369
revocation, 15-2378, 15-2379
merger, filing of articles, 15-2374
withdrawal, issuance of certificate, 15-2376, 15-2377
forms for reports to be prescribed by secretary of state, 15-2390
involuntary dissolution, notice to attorney general of corporations subject to, 15-2352
merger or consolidation of corporations
articles of merger or consolidation, filing, 15-2341
certification, effect of, 15-2341, 15-2342
power to administer act, 15-2387
restated articles of incorporation, certification, 15-2337
Securities act, exempt securities, 15-2013
Service of process on corporation, 15-2310
foreign corporations, 15-2372
Shares of stock prohibited, 15-2326
Short title, 15-2301
Ultra vires as a defense, 15-2306
Unauthorized assumption of corporate powers, 15-2394
Waiver of notice requirements, 15-2392

NOTARIES PUBLIC
Deputy registrars, service as, 23-3003

NOTES
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

NOTICES
Certified and registered mail, 19-122
Radio or television broadcast supplementing notice, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of broadcast, 19-203

NUISANCES
Alcoholic beverage bottle clubs constitute, 4-173
Buildings or land used for prostitution, gambling or narcotic drug transactions, abatement as nuisance, 94-1002
Sanitary deficiencies in public buildings as nuisance, 69-4118

NURSES
Child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
Employment practices
bargaining units, 41-2204 to 41-2207
definitions, 41-2202
improper employment practices, 41-2203
injunctive and other relief, 41-2208
purpose of act, 41-2201
state board of health
determination of composition of bargaining unit, 41-2204, 41-2206, 41-2207
institution of proceedings against improper practices, 41-2208
strikes, when unlawful, 41-2209
License to practice nursing
endorsement without examination of licensee of another state, 66-1228

NURSES (Continued)
License to practice nursing (Continued)
fees
disposition of fees, 66-1237
endorsement without examination, 66-1229
practical nurse license, 66-1234
renewal fee, 66-1236
lapse of license by failure to renew, 66-1236
renewal of license, fee, 66-1236
Malpractice, statute of limitations, 93-2624
State board of nursing renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
moneys received by board, disposition, 66-1237
retention of functions by board, 82A-1605
Visiting nurses, employment by local boards, 69-4512

NURSING HOMES
Administrators
board of examiners renamed, and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment of board members, 66-3102
compensation and expenses of board members, 66-3107
continuation in office or replacement of board members, 82A-1606
definition of terms, 66-3101
employment of personnel for board, 82A-1604
exclusive jurisdiction of board, 66-3108
legal assistance in hearings by board, 82A-1604
organization of board, 66-3107
powers and duties of board, 66-3109, 82A-1605
retention of functions by board, 82A-1605
judicial review of board actions, 66-3114
licensure, 66-3103 to 66-3105, 66-3110, 66-3111
unlicensed administrating a misdemeanor, 66-3112
malpractice, limitation of actions, 93-2624
Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED
County operation of home, 16-1037
services provided at county-operated home, 16-1038
Fire regulations applicable, 69-1802
Joint county institutions authorized, 16-1040
definition of terms, 16-1039
terms of contract between counties, 16-1041
Lease of county property for home, 16-1036
Long-term care facilities, 69-5201 to 69-5221—See LONG-TERM CARE FACILITIES
Tax exemption when operated not for profit, 84-202

O

OATHS
Constitutional oath of office, 1972 Const., III, 3

OBSCENE CONDUCT
Offensive sexual material, public display illegal, punishment, 94-3624 to 94-3626
definition, 94-3624
theater previews, 94-3625
violation, punishment, 94-3626
Telephone, harassment by unlawful, penalty, 94-35-221.5, 94-35-221.6

References are to Title and Section numbers

OCCUPATIONAL DISEASE ACT

Administration of act, 92-1302
Aggravation of occupational disease by other disease, 92-1326
Agreement by employee to waive compensation void, 92-1330
American experience table of mortality, use, 92-1349
Appeals under—See Judicial review, below
Arise out of employment, when disease deemed to, 92-1305
Attachment, compensation exempt from, 92-1329
Attorney general, duties, 92-1343
Attorney's compensation, 92-1323
Autopsy, 92-1318
  expenses, 92-1320
Benefits
  burial expenses, 92-1324
  compensation payable under act same as under workmen's compensation act, 92-1321
"Black lung" disease—See Pneumoconiosis, below
Books, records and payrolls of employers to be open for inspection, 92-1358
Burial expenses, 92-1324
Claims
  filing, 92-1312
  forms, 92-1346
  time for presenting, 92-1312
Collateral attack on orders or decisions of board prohibited, 92-1361
Common law defenses not available, 92-1339
Common law right of action prohibited against employer electing to come under act, exceptions, 92-1331
Compensation
  amount of benefits and time period, same as workmen's compensation act, 92-1321
  assignment, limitation, 92-1329
  date for beginning of payment of compensation under act, 92-1338
  determination of amount of compensation and time and method of payment, 92-1336
  diminution because of payments under workmen's compensation act, 92-1333
  exceptions, 92-1311
  exemption from attachment, garnishment and execution, 92-1329
  false representation by employee as preventing, when, 92-1342
  liability of employer for, 92-1366
  limitations, 92-1311
  methods for employers to secure compensation to their employees, 92-1334
  partial disability, no compensation for, 92-1322
  payment, 92-1311
  payments due to child under 18 years of age or incompetent, 92-1337
  persons receiving public welfare benefits not entitled to compensation, 92-1332
  vested rights in prohibited, 92-1367
  willful misconduct, self-exposure or disobedience of orders of board as precluding, 92-1328
Compensation plans, 92-1334
Construction of act, 92-1368
Costs and disbursements in proceedings and hearings, 92-1357
Death
  autopsy, 92-1318
    expenses, 92-1320
  burial expenses, 92-1324
  disease other than silicosis as cause, report of member of medical committee, 92-1317
  notice of, 92-1313
  silicosis as cause of death, report of pulmonary specialist, 92-1316
Deduction from wages of part of premium constitutes misdemeanor, 92-1341
Defenses not available to employer, 92-1339
Definitions, 92-1303
Depositions, power to take, 92-1351
Diseases which constitute occupational diseases, enumeration, 92-1304
District court, powers concerning enforcement of production of testimony, 92-1355
Employees
  agreement to waive compensation or pay premium void, 92-1330

OCCUPATIONAL DISEASE ACT (Continued)

Employees (Continued)
applicants for employment who upon medical examination are found afflicted with occupational disease, employer not liable, when, 92-1330
right of employee to reject provisions of act, notice of, posting, 92-1309

Employers
books, records and payrolls to be open to inspection, 92-1358
compensation plan No. 1, direct payment to employee, 92-1334
compensation plan No. 2, insuring liability, 92-1334
compensation plan No. 3, occupational disease compensation account, 92-1334
deducting from wages part of premium, misdemeanor, 92-1341
liability for payment of compensation, 92-1366
liability where person employed by successive employers, exception, 92-1310

Evidence, certificate and certified copies as, 92-1356
Execution, compensation exempt from, 92-1329
Execution of process, fees, 92-1353
Expenses, 92-1357
False representation by employee as to prior diseases, effect, 92-1342
Garnishment, compensation exempt from, 92-1329
Hearings after receipt of notice and medical report, 92-1315
Hearings and investigations, conduct of, 92-1350
Hearings, findings and awards by board, 92-1335

Industrial accident board
administering oath, certifying official acts, issuing subpoenas, etc., power, 92-1354
administration of act, 92-1302
claim forms, prescribing, 92-1346
collateral attack on orders or decisions of prohibited, 92-1361
determination of amount of compensation and method and time of payment, 92-1336
hearings, findings and awards by, 92-1335
issuance of writs and process, power, 92-1353
jurisdiction to hear disputes and controversies, 92-1359
members not to receive additional compensation for administering act, 92-1302
powers necessary and convenient, authority concerning, 92-1352
power to administer oath, issue subpoenas, compel attendance of witnesses, etc., 92-1347
presumption as to legality of rules, orders, findings, etc., 92-1360
right to sue and be sued, 92-1344
rules and regulations, adoption, 92-1345
service of process on, 92-1344
traveling expenses, 92-1302

Information furnished to board confidential, 92-1348

Judicial review
appeal to district court
appearance, 92-1364
method of taking, 92-1362, 92-1363
time for, 92-1362
appeal to supreme court, 92-1365
collateral attack upon orders and decisions of board prohibited, 92-1361
jurisdiction of board to hear disputes and controversies, 92-1359

Lump sum settlements
exception as to amount of attorney's compensation, 92-1323
prohibition against, 92-1323

Medical and hospital expenses, 92-1325

Medical examination
cost, payment, 92-1320
periodic medical examination, 92-1319
procedure, 92-1315
re-examination, 92-1315
report, 92-1315

Medical panel
appointment, 92-1314
composition, 92-1314
medical association, certifying nominees, 92-1314

References are to Title and Section numbers

OCCUPATIONAL DISEASE ACT (Continued)
Notice of disability or death, time for giving, 92-1313
Notice of employee's right to reject provisions of act, posting of, 92-1309
Occupational disease compensation account, 92-1334
"Occupational disease" defined, 92-1304
Partial disability, no compensation for, 92-1322
Payments due to child under 18 or to person adjudged incompetent, method of making, 92-1337
Periodic medical examinations, 92-1319
Persons receiving benefits under public welfare act not entitled to compensation benefits, 92-1332
Persons subject to act, 92-1307
Pneumoconiosis
benefit payments, 92-1321
definition, 92-1303
medical definition of totally disabling pneumoconiosis, 92-1315.1
liability of last employer, 92-1310
presumptions as to death or disablement, 92-1303
standards for determining death or total disability, medical examination, 92-1315
time for presenting claims, 92-1312
Prevention of occupational disease, 69-4206 to 69-4221—See OCCUPATIONAL HEALTH
Proximate causation of occupational disease, 92-1305
Radiation sickness, time for filing notice of claim, 92-1311, 92-1313
Regular employees, 92-1306
Reports by physicians and hospitals of occupational diseases, 69-4204
Rights to compensation under act exclusive remedy, when, 92-1308
Short title, 92-1301
Silicosis as cause of death, report of pulmonary specialist, 92-1316
Silicosis with complication of tuberculosis, 92-1327
Subcontractors, 92-1306
Successive employers, 92-1310
Violation of act, penalties, 92-1340
Willful misconduct, willful self-exposure or disobedience precludes compensation, 92-1328
Witnesses before board, fees and mileage, 92-1354

OCCUPATIONAL HEALTH
Access to premises for inspection, 69-4213
Administration of act by department of health, 69-4209
Advisory committee, appointment, compensation, meetings and functions, 69-4210
committee abolished, 82A-1011
Appeals to district court, 69-4218
Board of health, powers and duties in general, 69-4211
Citation of act, 69-4206
Confidentiality of records, 69-4219
Damage actions, remedies unaffected, 69-4221
Definition of terms, 69-4208
Director of occupational health program, appointment and functions, 69-4209
Emergency orders to protect health, 69-4216
Emission of pollutants, standards for, 69-4214
Enforcement proceedings, 69-4215
hearings and judicial review, 69-4218
Exemptions from requirements, 69-4217
Federal grants, acceptance and administration, 69-4211, 69-4220
Hearings by board of health, 69-4211
Informational activities of board of health, 69-4211
Inspection of premises, 69-4213
Orders by board of health, 69-4211
Penalties for violations, 69-4221
Permits for machinery and equipment, application for and issuance, 69-4212
Plans for prevention of disease, 69-4211
Policy and purpose of act, 69-4207
Records confidential, 69-4219

OCCUPATIONAL HEALTH (Continued)
Rehearings on board orders, 69-4218
Reports by physicians and hospitals of occupational diseases, 69-4204
Rules implementing act, 69-4211
hearings before promulgation of rule, 69-4218
Standards for emission of pollutants, 69-4214
Studies and research by board of health, 69-4211
Variances from requirements, 69-4217
Violation of requirements
civil remedies unaffected, 69-4221
emergency orders, 69-4216
hearings on alleged violations, 69-4215
order for corrective action, 69-4215
penalties for violations, 69-4221

OIL AND GAS
Assessments against operators and producers, disposition of moneys, 60-145
Conservation commission continued as quasi-judicial board, change of name, 82A-1508
Earmarked revenue fund, deposits and use of fund, 60-145
Federal lands, royalties used for school equalization aid, 75-6916
Lien on well, priority and filing of statement, 45-1003
Petroleum field station at Billings, transfer to commission, 60-147
Real estate brokers' license act inapplicable to dealings in mineral interest, 66-1926
Report of conservation commission to governor, 60-127
Resource indemnity trust account tax, 84-7001 to 84-7013—See TAXATION
Review of orders of conservation commission, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Unit operation of pool
allocation of production and income to owners of tracts, 60-131.9
criteria for approval of unit operation, 60-131.2
hearing by commission required, 60-131.1
lien on income for operating costs, 60-131.9
order for unit operation, terms and conditions, 60-131.3
previously established units, inclusion, 60-131.6
purpose of unit operation, 60-131.1

OPERATORS' AND CHAUFFEURS' LICENSES
Agents for issuance of licenses, 31-135
Driving under influence, mandatory suspension or revocation, 31-149
Epileptic seizures, restrictions on issuance to persons subject to, 31-127
Expiration date of license, 31-135
Fee payable for license, 31-135
Forfeiture of bail on motor vehicle offense, return of license to board, 31-145
revocation of license, 31-146
Identification cards for unlicensed persons, 31-170 to 31-174
Implied consent to alcohol test, 32-2142.1 to 32-2142.3—See MOTOR VEHICLES, Driving under influence
Interstate compact, text and enactment, 31-163
governor designated as executive head, 31-166
highway patrol board designated as licensing authority, 31-164
judicial review of actions pursuant to compact, 31-169
offenses furnishing grounds for suspension or revocation of license, 31-168
reimbursement of compact administrator, 31-165
report to highway patrol of suspension or revocation of license, 31-167
Issuance of license, 31-135
Person holding chauffeur's license not to have operator's license, 31-125
Photograph to be included in license, 31-135
Possession of more than one license prohibited, 31-135
Probationary licenses, issuance, 31-147
Provisional license, designation and suspension, 31-135
Revocation or suspension, child under 18 unlawfully operating motor vehicle, 32-21-163

References are to Title and Section numbers

OPERATORS' AND CHAUFFEURS' LICENSES (Continued)
Roadblocks, authority of officers to check for driver's licenses, 95-618
School bus drivers, qualifications for, 75-7003
Schools, driver training administered by, 75-7901 to 75-7907—See SCHOOLS, Traffic education
Issuance of license after completion of course, 31-127
Snowmobile operation, when license required, 53-1018
Surrender of foreign license on licensing in Montana, 31-125
Testing of applicants for renewal, 31-135

OPTOMETRY
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  attorney general to represent board in supreme court, 66-1315
  compensation of board members, 66-1311
  continuation in office of board members, 82A-1606
  employment of personnel for board, 82A-1604
  legal assistance in hearings by board, 82A-1604
  report of board, 66-1311
  retention of functions by board, 82A-1605
Continuing education required for renewal of license, 66-1318
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician, 40-4108, 40-4109
Fee for renewal of registration, 66-1307
Malpractice, statute of limitations, 93-2624
Public agencies, acceptance of services of licensed optometrist, 66-1317
Renewal of registration, 66-1307
Violations
  injunction on relation of board of examiners, 66-1302
  penalty for, 66-1314
  prosecution of, 66-1315

ORDERS
Application for order to be by motion, M. R. Civ. P., Rule 7(b)
Exceptions to orders of court unnecessary, M. R. Civ. P., Rule 46
Mistaken order, grounds and procedure for relief from, M. R. Civ. P., Rule 60
Pre-trial conference, order issued after, M. R. Civ. P., Rule 16
Process used for enforcement for and against persons not parties, M. R. Civ. P., Rule 71
Service on parties, when required, M. R. Civ. P., Rule 5(a)

OSTEOPATHY
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  compensation of board members, 66-1410
  continuation in office of board members, 82A-1606
  employment of personnel for board, 82A-1604
  fees received by board, deposit and use, 66-1410
  legal assistance in hearings by board, 82A-1604
  report by board to governor, 66-1410
  retention of functions by board, 82A-1605
Board of medical examiners, representation on, 66-1013
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician under disability insurance, 40-4108, 40-4109
Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
License, issuance after examination, 66-1405
Malpractice, statute of limitations, 93-2624
Reciprocity licensing, examination required, 66-1025

References are to Title and Section numbers

OUTDOOR RECREATIONAL RESOURCES

Advisory and planning committee abolished, 82A-1511
Fish and game commission as agent to implement federal act, 62-402
  powers of commission, 62-403
Purpose of act, 62-401

P

PAINTS AND PAINT PRODUCTS

Analysis, 3-1514
Contents of label, 3-1510
County attorney, duties, 3-1515
Enforcement of regulatory act, 3-1513
Intrastate transactions, application of act, 3-1510
Labeling requirements, 3-1510
Laboratory for analysis, 3-1514
Penalty for violations, 3-1511
Possession of improperly labeled products as prima facie evidence, 3-1512

PARDONS

See PROBATION, PAROLE AND CLEMENCY

PARENT AND CHILD

Liability of parent for willful destruction of property by child, 61-112.1
  amount of recovery, 61-112.2
  attorney's fee, 61-112.2

PARKING FACILITIES

Meters, use of device to open or break meter to commit larcency unlawful, penalty, 94-35-249

Off-street parking facilities in cities
  improvement districts, authority to create, 11-2201
    assessments and bonds, 11-2214.2
    bonds, authority of district to issue, 11-2214.1
    leasing of real property, 11-2214.4
    payment of assessments, 11-2214.3
    resolution of intention, publication and adoption, 11-2214.5

PARKS

Counties
  board of park commissioners
    acceptance of federal aid, 16-4807
    accounts and records, 16-4801
    commissioners, qualifications and terms, 16-4801, 16-4804
    compensation of commissioners, 16-4804
    execution of contracts, 16-4804
    failure of commissioner to attend meetings, vacancy in office, 16-4804
    funds, receipt and disbursement, 16-4803
      auditing and allowance of claims, 16-4805
    interest of commissioner in contracts of board prohibited, 16-4804
    meetings, 16-4801, 16-4804
      minute book, record of proceedings, 16-4801
      notice of special meetings, 16-4804
    officers of the board, duties, 16-4801
    powers and duties of board, 16-4802
    quorum for the transaction of business, 16-4804
    secretary to board, employment and duties, 16-4801.1
    vacancies on board, filling of, 16-4804
  claims against county, allowance, 16-4805
  county land donated for park purposes, 16-1131
  disbursement of park funds, 16-4803
  discrimination in employment prohibited, 16-4806
  federal aid, conditions, 16-4807

PARKS (Continued)
Counties (Continued)
park fund, separate fund in county treasury, 16-4803
restricted liability for expenditures, 16-4803
superintendent of parks, employment and duties, 16-4801.1
Gasoline tax moneys allocated for park improvement, 32-2601
Open-space land, 62-601 to 62-609
acquisition and designation of land, 62-604
comprehensive planning, commission authorized, 62-607
conversion or diversion of open-space land, 62-605
powers of public bodies, 62-606
Outdoor recreational resources, development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES
State parks
fees and charges, disposition and use, 62-305
fish and game commission vested with control, 62-301
powers and duties enumerated, 62-304
injury to park property, penalty, 62-314
scientific and recreational park, establishment authorized, 62-310
rules and regulations, 62-311
violation of rules and regulations, penalty, 62-314

PARTIES
Administrators need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Assignee of claim as plaintiff, defenses available against, 93-2802
Capacity to sue or be sued determined by statute, M. R. Civ. P., Rule 17(b)
Class actions, M. R. Civ. P., Rule 23(a)
Counterclaim requiring addition of parties, M. R. Civ. P., Rule 13(h)
Cross-claim requiring addition of parties, M. R. Civ. P., Rule 13(h)
Death of party, substitution of representative, M. R. Civ. P., Rule 25(a)
Executor need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Guardians need not join wards as parties, M. R. Civ. P., Rule 17(a)
Incompetent persons, representation in actions, M. R. Civ. P., Rule 17(c)
substitution of guardian in pending action, M. R. Civ. P., Rule 25(b)
Interpleader by joinder or substitution, M. R. Civ. P., Rule 22
Interrogatories to parties, M. R. Civ. P., Rule 33
Intervention, M. R. Civ. P., Rule 24
Joinder of parties
form for allegation of reason for omission of necessary party, M. R. Civ. P., Appendix of Forms, Form 22
interpleader, M. R. Civ. P., Rule 22(a)
misjoinder, effect and correction, M. R. Civ. P., Rule 21
nonjoinder, effect and correction, M. R. Civ. P., Rule 21
permissive joinder, M. R. Civ. P., Rule 20(a)
required joinder, effect of failure to join, M. R. Civ. P., Rule 19
separation of trials, M. R. Civ. P., Rule 20(b)
Minors, representation in actions, M. R. Civ. P., Rule 17(c)
Mortgage foreclosure, necessary parties to, 93-6001
Motion on failure to join indispensable party, M. R. Civ. P., Rule 12(b)
Part of defendants served, proceeding against, M. R. Civ. P., Rule 4 D(10)
Physical and mental examinations, compelling submission, M. R. Civ. P., Rule 35
Public officers, substitution of successor, M. R. Civ. P., Rule 25(d)
Real party in interest, action to be prosecuted in name of, M. R. Civ. P., Rule 17(a)
State bringing action for use or benefit of another, M. R. Civ. P., Rule 17(a)
Substitution of parties, M. R. Civ. P., Rule 25
interpleader, substitution by, M. R. Civ. P., Rule 22(b)
Third-party practice, M. R. Civ. P., Rule 14
Transfer of interest, substitution of successor, M. R. Civ. P., Rule 25(c)
Trustee need not join beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Unauthorized insurers, actions by prohibited, 40-3402

PARTITION
Personal property
county in which action to be brought, 93-6301.1

PARTITION (Continued)
Personal property (Continued)
partition or sale authorized, 93-6301.1
procedure, 93-6301.2
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

PARTNERSHIPS
Execution against partnership interest, 93-5811
Service of process on partnerships, M. R. Civ. P., Rule 4 D(2)
Workmen's compensation coverage of member, 92-411

PASSENGER TRAMWAYS
Appeal to district court, 69-6614
Common carrier, tramway not considered, 69-6615
Damage to tramway unlawful, 69-6616
misdemeanor, 69-6617
Dangerous use of tramway unlawful, 69-6616
misdemeanor, 69-6617
Definition of terms, 69-6602
Employment of personnel, 69-6610
Hearings, 69-6610
Injunction to compel compliance with requirements, 69-6613
Inspection of tramways, 69-6611
certificate of registration, inspection before issuance, 69-6607
Orders for corrective actions, 69-6612
remedies to enforce compliance, 69-6613
Policy of state, 69-6601
Public utility, tramway not considered, 69-6615
Registration required before operation of tramway, 69-6605
application for annual registration, 69-6606
certificate of registration, issuance and display, 69-6607
denial or revocation of registration, 69-6610
expiration of registrations, 69-6607
fees for registration, 69-6608
deposit of fees in earmarked revenue fund, 69-6609
inspection to determine compliance with requirements, 69-6607
supplemental application for new tramway, 69-6607
suspension of registration for failure to comply with requirements, 69-6613
Rules and regulations governing tramway construction and operation, 69-6610
Violations, prosecution, 69-6610

PAWNBROKERS AND JUNK DEALERS
Failure to keep register as misdemeanor, conviction works forfeiture of license, 94-3702
Secured transactions, application of law to, 87A-9-203

PAYMENT
Affirmative defense, M. R. Civ. P., Rule 8(c)
Voluntary partial payment of damage claim, effect, 93-2201-7 to 93-2201-10

PEACEABLE ASSEMBLY
Freedom of assembly, 1972 Const., II, 6

PEACE OFFICERS
Arrests, 95-608—See ARRESTS, Peace officer
Criminal investigator, position within office of attorney general, 82-414 to 82-420—See CRIMINAL INVESTIGATION DIVISION
Definition, Code of Criminal Procedure, 95-210
Fish and game laws, enforcement by officers, 26-114
Law enforcement academy, 75-5201 to 75-5208—See COLLEGES AND UNIVERSITIES, Law enforcement academy
Qualifications of, 16-3705
Reports of accidents investigated, 32-1208
Residence requirements, 16-3705
Roadblocks, arrests at, 95-618

References are to Title and Section numbers

PEACE OFFICERS (Continued)
Teletypewriter communications system, 82-3901 to 82-3906—See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS

PERISHABLE PROPERTY
Carrier may sell, when, 8-819

PERPETUITIES
Prohibition against perpetuities except for charitable purposes, 1972 Const., XIII, 6

PESTICIDES
Access of department to private property, 27-243
Administration of act by department of agriculture, 27-215
Adulterated pesticides, distribution prohibited, 27-218
  detention and embargo of adulterated pesticides, 27-220
Advisory committees, appointment, compensation and functions, 27-240
Agricultural pesticides, designation and restrictions on use, 27-228
Analysis of pesticides, 27-219
Applicator's license required, 27-221
  aerial applicator to meet requirements of aviation agencies, 27-222
  annual application for license, 27-220
  examination of applicants for license, 27-224
  financial responsibility, proof required, 27-232
  governmental agencies, applicators working for, 27-231
  information made available to applicators, 27-224
  public utility applicators, 27-221
  veterinarians exempt from licensing, registration and certain qualifications required, 27-221
Complaints filed, service on, 27-235
Confiscation of unauthorized products, 27-220
Co-operation by department with other agencies, 27-242
Damage reports filed with department, 27-233
Dealer's license required, 27-225
  examination of applicants for license, 27-226
  pharmacists and veterinarians exempt from licensing, registration and certain qualifications required, 27-225
Definition of terms, 27-216
Disposal of pesticides, pollution to be avoided, 27-244
Educational programs of department, 27-241
Embargo of unauthorized pesticides, 27-220
Farm applicators, restrictions on operations by, 27-228
Financial responsibility, proof required of applicators, 27-232
Formulas for pesticides, unauthorized disclosure prohibited, 27-218
Governmental agencies, application of regulations to, 27-231
Hearings by commissioner on request by persons adversely affected, 27-236
Home use, pesticides designated for, 27-227
Inspection powers of department, 27-243
Judicial review of departmental actions, 27-237
Labeling required for pesticides, 27-218
  detention and embargo of misbranded pesticides, 27-220
Losses and damages, report filed with department, 27-233
Nonresident licensees, agent for service of process on, 27-229
Operators, procedures for controlling, 27-223
  examination of operators, 27-224
  governmental agencies, operators working for, 27-231
  information made available to operators, 27-224
Penalties for violations, 27-245
Petitions filed with department, hearing on, 27-235
Prohibited acts, 27-218
Publication of information by department, 27-239
Purpose of regulatory provisions, 27-214
Registration required for pesticides distributed, 27-217
  detention and embargo of unregistered pesticides, 27-220
  unregistered pesticides, distribution prohibited, 27-218

PESTICIDES (Continued)
Retail sales for home use, limitations and license, 27-227
Revocation or refusal of licenses and permits, 27-230
hearings before commissioner on adverse action, 27-236
judicial review of adverse orders, 27-237
Rules and regulations, contents and adoption, 27-234
hearings on proposed changes, 27-235
judicial review of rules, 27-237
Sampling and analysis of pesticides, 27-219
Short title of act, 27-213
Subpoena power of department, 27-238
Violation of provisions, penalties and prosecution, 27-245

PETROLEUM PRODUCTS
Adulterated or misbranded products, sale prohibited, 60-205
Calibration of tanks and measuring devices, 60-229
liquefied petroleum dispensing devices, 60-230
temperature correction required, 60-231
penalty for violations of act, 60-233
rules and regulations of state sealer, 60-232
standards promulgated by state sealer, 60-232
"Commissioner" defined, 60-203.1
Dealer's license required to do business, 60-224
application for license, 60-224
definition of terms, 60-223
delinquent renewal fee, 60-228
expiration and renewal of licenses, 60-228
meter license fees, 60-227
penalty for unlicensed operation, 60-233
place of business license fee, 60-225
pump license fees, 60-226
rules and regulations for enforcement, 60-232
sealing of equipment where fee not paid, 60-228
seizure and confiscation of property of unlicensed dealer, 60-224
tank license fees, 60-228
Enforcement of chapter by commissioner of agriculture, 60-203.2
Inspections and tests by commissioner, 60-211
obstruction of entry or inspection prohibited, 60-217
samples furnished by dealers, 60-212
samples furnished by users, 60-217
Rules and regulations for interpretation of chapter, 60-203.2
state sealer to regulate dealers, tanks and measuring devices, 60-232
Standards of quality, strength and purity, determination and promulgation by commissioner, 60-203.3
Substandard products, sale prohibited, 60-205

PHARMACIES
Alcoholic beverages, possession and sale by druggist, 4-134
Interns, permitted practices by, 66-1501
Labeling of prescriptions, 66-1523
Malpractice, statute of limitations, 93-2624
Medical practitioners' dealings with pharmacies
definition of terms, 27-901
enforcement proceedings by county attorneys, 27-905
ownership of pharmacy prohibited, 27-904
existing ownership exempt, 27-906
rebates and commissions unlawful, 27-904
State board of pharmacy renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
biennial report to governor, 66-1504
continuation in office of board members, 82A-1606
employment of personnel for board, 82A-1604

PHARMACIES (Continued)
State board of pharmacy (Continued)
fees and fines received by board, deposit and use, 66-1527
interns, licensing, 66-1504
legal assistance in hearings by board, 82A-1604
retention of functions by board, 82A-1605
review of orders, application of rules of civil procedure, M. R. Civ. P., Rule 81(a) Table A
Store licenses and registration, 66-1508

PHOTOGRAPHY
License fund abolished, 79-416

PHYSICAL THERAPY
Application for examination, contents and filing, 66-2503
Certificate, issuance to licensed therapist, 66-2507
Citation of practice act, 66-2517
Definition of terms used in practice act, 66-2501
Examination of applicants for license
application for examination, 66-2503
conduct of examination, 66-2506
fee for examination, 66-2503
repeat examination after failure to pass, 66-2503
scope of examination, 66-2506
Exemption from practice act for other professions, 66-2513
Expiration and extension of licenses, 66-2508
Investigation and report of violations, 66-2515
Licensed therapist from other states, licensing, 66-2505
List of licensed therapists, publication and distribution, 66-2514
Malpractice, statute of limitations, 93-2624
Oath or fraudulent representation to obtain license, misdemeanor, 66-2512
Penalties for violations, 66-2516
Practice of medical profession by therapist not authorized, 66-2513
Previously practicing therapists, licensing, 66-2504
Qualifications of licensees to practice, 66-2502
Refusal to issue or renew license, grounds, 66-2509
Register of licensed persons kept by board, 66-2514
Rules to carry practice act into effect, adoption by board, 66-2514
Temporary licenses, issuance and duration, 66-2510
Unauthorized representation as licensed therapist, misdemeanor, 66-2511

PHYSICIANS AND SURGEONS
Alcoholic beverages, prescription and administration by physician, 4-136
Appeal from board, application of rules of civil procedure, M. R. Civ. P., Rule 81(a), Table A
Autopsies ordered by coroner, liability of physician limited, 95-813
Child abuse reports, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
Corporations for practice, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Disability insurance, freedom of choosing physician, 40-4108, 40-4109
Drug trade prohibited to practitioners, 27-901 to 27-906—See FOOD AND DRUGS, Medical practitioners
Emergency care at scene of accident, restriction on liability for, 17-410
Malpractice, statute of limitations, 93-2624
Medical Practice Act
board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment of board members, 66-1013
compensation of board members, 66-1020
continuation in office of board members, 82A-1606

PHYSICIANS AND SURGEONS (Continued)
Medical Practice Act (Continued)
board of examiners (Continued)
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
meetings of board, 66-1018
organization and officers of board, 66-1015
powers and duties of board, 66-1017, 82A-1605
qualifications of board members, 66-1013
records of board, 66-1019
retention of functions by board, 82A-1605
supervision and surveillance of licensees, 66-1016
terms of office of board members, 66-1014
certificates, 66-1021 to 66-1024
disciplinary proceedings, 66-1038 to 66-1040
internship required, 66-1029
licensure
application, 66-1032
examination, 66-1033
fee, 66-1031
issuance, validation and refusal of licenses, 66-1034 to 66-1036
qualifications, 66-1025 to 66-1027
schools approved, 66-1028
practice of medicine defined, exemption, 66-1012
residency approved, 66-1030
unlawful practice a misdemeanor, 66-1041
unprofessional conduct, 66-1037
Occupational disease reports, contents and filing, 69-4204
Optometry regulatory act not applicable to, 66-1316
Venereal disease report required, 69-4604
exposure of other persons to be reported, 69-4607

PINE HILLS SCHOOL
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

PIPELINES
Attorney general to enforce provisions of act, 8-202
Common carriers defined, 8-201
Connections and interchange facilities, power of board to require, 8-205
Discrimination prohibited, 8-207, 8-210
Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See STREETS, Underground facility
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Investigatory powers of board, 8-206
Irrigation and drainage pipelines, taxability, 84-206
Lien on pipeline, priority and filing of statement, 45-1003
Public utility, status of pipelines as, 8-202
Rate regulation
discrimination prohibited, 8-207
hearings and complaints, 8-204
publication of tariffs, 8-206
Records of carriers, investigation by board, 8-206
Reports required of carriers, 8-206

PLANNING AND ECONOMIC DEVELOPMENT
Administrators of sections of department, appointment of personnel, 82-3707
Citation of act, 82-3701
Commission, 82-3703
abolition and transfer of functions, 82A-902
expenses of members, 82-3703
members of commission, 82-3703

References are to Title and Section numbers

PLANNING AND ECONOMIC DEVELOPMENT (Continued)
Commission (Continued)
terms of members, 82-3703
vice-chairman, secretary, and other officers, 82-3703
Contracts and agreements for projects and programs, 82-3706
Co-operation with other agencies, 82-3706
Department of planning and economic development, 82-3703
abolition and transfer of functions, 82A-902
executive head of department, appointment, compensation, 82-3704
functions of department, 82-3705
Necessity and public policy, declaration of, 82-3702
Planning board abolished, transfer of records, property and moneys, 82-3709

PLANNING AND ZONING
Act not to prevent recovery and use of mineral, forest or agricultural resources, 11-3853
Airport authority zoning power, 1-909
municipal zoning power preserved, 1-924
Appropriations for expenses of planning board, 11-3815, 11-3825
Building regulations, extraterritorial application, 11-2702
City-county board
advisory function, 11-3801
apportionment of expenses between governmental units, 11-3825
budget of board, 11-3824
composition of board, 11-3810
jurisdictional area, definition and establishment, 11-3830
projects outside area, power to plan, 11-3830.1
zoning districts within jurisdictional area, 16-4703
powers of board, 11-3824
property, power to accept, hold and use, 11-3827
purpose of creation, 11-3801
qualifications of citizen members, 11-3812
quorum of board, 11-3818
recommendations to county commissioners, 16-4702
removal of citizen member from office, 11-3813
reports of board, 11-3824
terms of office of members, 11-3810
travel expenses to attend regional or national conferences, 11-3820
zoning commission, board functioning as, 11-3828
county zoning commission, acting as, 16-4702
City planning board
advisory function, 11-3801
composition, 11-3804
property, power to accept, hold and use, 11-3827
purpose of creation, 11-3801
qualifications of citizen members, 11-3808
County planning board authorized, 11-3801
composition of board, 11-3810
districts created by county commissioners, 11-3825
jurisdictional area of county planning board, 11-3830.2
notice and hearing on creation of county board, 11-3801
recommendations to county commissioners as to districts, 16-4702
residence of board members, 11-3812
vacancies on board, filling, 11-3811
County zoning districts
actions to enforce zoning regulations, 16-4707
adoption of resolution creating district and establishing regulations, 16-4705
board of adjustment, establishment, powers, and procedure, 16-4706
city-zoned area not to be included, 16-4101
comprehensive development plan to be used, 16-4704
continuation of nonconforming uses, 16-4709
enforcing officers, appointment and powers, 16-4708
establishment of districts authorized, 16-4703
factors considered in making regulation, 16-4704
hearings on proposed district and regulations, 16-4705

PLANNING AND ZONING (Continued)

County zoning districts (Continued)
interim zoning map or regulation, 16-4711
judicial review of actions by board of adjustment, 16-4706
natural resources to be protected, 16-4710
permits for location or conformance, issuance and fees, 16-4708
power of commissioners to adopt regulation, 16-4701
procedure for adoption of regulations and boundaries, 16-4705
property, power of board to accept, hold and use, 11-3827
publication of intention to create district, 16-4705
purpose of act, 16-4701
recommendations by planning boards, 16-4702
resolution of intention to create district, 16-4705
uniformity of regulation within district, 16-4703
uses regulated within district, 16-4703
violations of act or resolution, penalty, 16-4707
Definition of terms in planning board law, 11-3803
Foster, boarding home or community residential facility serving disabled or handicapped persons as residential use of property, 11-2702.2
"community residential facility" defined, 11-2702.1
conditional use permit may be required, 11-2702.2
licensing of home or facility required, 11-2702.2
Industrial development projects, 11-4101 to 11-4110—See INDUSTRIAL DEVELOPMENT
Master plan
adoption of plan by governing bodies, 11-3840
adoption of plan by planning board, 11-3834
contents of plan, 11-3831
definition, 11-3803
governing bodies' action on plan, 11-3840
hearing prior to adoption of plan, 11-3833
policies to be embodied in plan, 11-3828
Open-space land, 62-601 to 62-609—See PARKS
Ordinances and resolutions
recommendations of planning board to governing bodies, 11-3834
subdivision plats, requiring conformity to master plan, 11-3842
validation of prior actions, 11-3855
Planning districts, creation by county commissioners authorized, 11-3825
Subdividing and platting of land
advice of planning board required on approval by governing body, 11-3842.1
certificate of survey, when required, contents, form, 11-3872
citation of act, 11-3859
conformity to master plan, ordinance or resolution requiring, 11-3842
correction of survey and plat at expense of governing body, 11-3874
covenants to run with land, 11-3869
dedication of portion of subdivision for parks and playgrounds may be required, 11-3864 (1)
cash donation in lieu of dedication, 11-3864 (2)
location of parks and playgrounds in certain subdivisions by governing body, 11-3864 (1)
title insurance or abstract of title required for dedicated lands, 11-3865
waiver of dedication and cash donation, 11-3864 (3) to (5)
definition of terms, 11-3861
donations or grants to public as grants to donee, 11-3871
environmental assessment to accompany preliminary plat, contents, 11-3863 (3) (4)
exemption of certain land dispositions, 11-3862 (3) (4)
fees to be paid by subdivider, 11-3868
filing of plat required, 11-3862 (2), 11-3867
survey to accompany plat, 11-3862 (2)
final plat to be reviewed by land surveyor and governing body, 11-3867
dispositions to be made in accordance with plat, 11-3867 (3)
recording of plat, 11-3867 (3), 11-3870

References are to Title and Section numbers

PLANNING AND ZONING (Continued)
Subdividing and platting of land (Continued)
index of plats to be kept by county clerk and recorder, contents, 11-3873
minimum requirements and model subdivision rules to be prescribed by department, 11-3863 (2)
environmental assessments to be required of subdivider, 11-3863 (3)
scope and contents, 11-3863 (2)
oaths, administration by registered land surveyor authorized, record to be kept, 11-3875
preliminary plat to be submitted to local governing body, 11-3866 (1)
action on plat by governing body, time allowed, 11-3866 (2)
approval of plat by governing body, duration, 11-3866 (4)
public hearing required, notice, 11-3866 (3)
rejection or conditional approval, procedure, 11-3866 (3)
prior recorded plats and title records validated, 11-3870 (2)
purpose of law, 11-3860
recording of plat, effect, 11-3867, 11-3870
regulations to be adopted and enforced by counties and municipalities, scope, 11-3863 (1)
contents of regulations, 11-3863 (5) to (7)
division of planning and economic development to promulgate regulations upon failure of local governing body, 11-3863 (8)
public hearing on regulations required, notice, 11-3863 (1)
submission of proposed regulations to division of planning and economic development, 11-3863 (1)
state highway land acquisitions exempt, 11-3862 (3)
survey by registered land surveyor required, exceptions, 11-3862
contents of survey, 11-3862 (2)
uniform monumentation standards to be prescribed by department, 11-3862 (5)
vacation of plat, reversion of title, utility rights to continue as easements, 11-3870 (1)
violation as misdemeanor, punishment
Submission of urban renewal plan to commission, 11-3906
Tax levy for planning board purposes, 11-3815, 11-3825
Validation of prior ordinances, rules and regulations, 11-3855

PLANNING BOARD, STATE
State planning board abolished, transfer of records, property and moneys to planning and economic development commission, 82-3709

PLEADINGS
Accord and satisfaction as affirmative defense, M. R. Civ. P., Rule 8(c)
Adoption by reference, M. R. Civ. P., Rule 10(c)
Affirmative defenses, setting forth in pleadings, M. R. Civ. P., Rule 8(c)
Alternative pleadings permitted, M. R. Civ. P., Rule 8(e)
Ambiguity, motion for more definite statement, M. R. Civ. P., Rule 12(e)
Amendments of pleadings, M. R. Civ. P., Rule 15
Appearance, filing of answer constituting, 93-8505
Arbitration and award as affirmative defense, M. R. Civ. P., Rule 8(c)
Assumption of risk as affirmative defense, M. R. Civ. P., Rule 8(c)
Capacity to sue or be sued, absence raised by negative pleadings, M. R. Civ. P., Rule 9(a)
Caption, content, M. R. Civ. P., Rule 10(a)
Claims for relief, contents, M. R. Civ. P., Rule 8(a)
Conciseness required, M. R. Civ. P., Rule 8(e)
Conditions precedent, general averment of performance permitted, M. R. Civ. P., Rule 9(c)
Consideration, failure as affirmative defense, M. R. Civ. P., Rule 8(c)
Contributory negligence as affirmative defense, M. R. Civ. P., Rule 8(c)
Counterclaims, M. R. Civ. P., Rule 13(a) to (f)
Criminal cases—See CRIMINAL PROCEDURE
arraignment of defendant, 95-1601 to 95-1608
charging an offense, 95-1501 to 95-1506

References are to Title and Section numbers

PLEADINGS (Continued)
Criminal cases (Continued)
guilty plea, when accepted, 95-1902
justices' courts and police courts, 95-2004
pretrial motions, 95-1701 to 95-1710
Cross-claims, M. R. Civ. P., Rule 13(g)
Damages, specific statement of special damage required, M. R. Civ. P., Rule 9(g)
Defenses, form of stating, M. R. Civ. P., Rule 8(c)
Defenses required to be made by responsive pleadings, M. R. Civ. P., Rule 12(b)
Demurrers abolished in civil proceedings, M. R. Civ. P., Rule 7(c)
Denials, form of stating, M. R. Civ. P., Rule 8(b)
Directness required, M. R. Civ. P., Rule 8(e)
Discharge in bankruptcy as affirmative defense, M. R. Civ. P., Rule 8(c)
Duress as affirmative defense, M. R. Civ. P., Rule 8(c)
Enumeration of pleadings allowed in civil cases, M. R. Civ. P., Rule 7(a)
Estoppel as affirmative defense, M. R. Civ. P., Rule 8(c)
Exceptions for insufficiency abolished in civil proceedings, M. R. Civ. P., Rule 7(c)
Exhibits as parts of pleading, M. R. Civ. P., Rule 10(c)
Failure to deny, effect, M. R. Civ. P., Rule 8(d)
Fellow servant rule as affirmative defense, M. R. Civ. P., Rule 8(c)
Filing with court required, M. R. Civ. P., Rule 5(d)
Form of pleading, M. R. Civ. P., Rule 10
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 2 to 14, 16, 17
Fraud as affirmative defense, M. R. Civ. P., Rule 8(c)
circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
General denial permitted, M. R. Civ. P., Rule 8(b)
Illegality as affirmative defense, M. R. Civ. P., Rule 8(c)
Inconsistent pleadings permitted, M. R. Civ. P., Rule 8(e)
Intent, general averment permitted, M. R. Civ. P., Rule 9(b)
Judgment on pleadings, motion for, M. R. Civ. P., Rule 12(c)
Judgments, manner of pleading, M. R. Civ. P., Rule 9(e)
Justices' courts, 93-6802.1, 93-6802.2
Knowledge, general averment permitted, M. R. Civ. P., Rule 9(b)
Laches as affirmative defense, M. R. Civ. P., Rule 8(c)
License as affirmative defense, M. R. Civ. P., Rule 8(c)
Malice, general averment permitted, M. R. Civ. P., Rule 9(b)
Mistake as defense, circumstances to be stated with particularity, M. R. Civ. P., Rule 9(b)
Names of parties, when included, M. R. Civ. P., Rule 10(a)
Official documents or acts, averment as to compliance with law, M. R. Civ. P., Rule 9(d)
Ordinances, manner of pleading, M. R. Civ. P., Rule 9(d)
Paragraphing and numbering, M. R. Civ. P., Rule 10(b)
Payment as affirmative defense, M. R. Civ. P., Rule 8(c)
Place, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Pre-trial conference, consideration in, M. R. Civ. P., Rule 16
Regulations, manner of pleading, M. R. Civ. P., Rule 9(d)
Release as affirmative defense, M. R. Civ. P., Rule 8(c)
Res judicata as affirmative defense, M. R. Civ. P., Rule 8(c)
Separation of claims and defenses, M. R. Civ. P., Rule 10(b)
Service on parties, when required, M. R. Civ. P., Rule 5(a)
Signature by attorney, M. R. Civ. P., Rule 11
Special damage, specific statement of items required, M. R. Civ. P., Rule 9(g)
Statute of frauds as affirmative defense, M. R. Civ. P., Rule 8(c)
Statute of limitations as affirmative defense, M. R. Civ. P., Rule 8(c)
Statutes, manner of pleading, M. R. Civ. P., Rule 9(d)
Striking pleadings or matter therein, motion for, M. R. Civ. P., Rule 12(f)
Substantial justice, pleadings construed to effect, M. R. Civ. P., Rule 8(f)
Supplemental pleadings, M. R. Civ. P., Rule 15(d)
Third-party practice, M. R. Civ. P., Rule 14
Time allowed for responsive pleadings, M. R. Civ. P., Rule 12(a)
Time, materiality of averments as to, M. R. Civ. P., Rule 9(f)
Variance of proof, amendment of pleadings, M. R. Civ. P., Rule 15(b)
Verification of pleading, form and persons by whom made, 93-3702

References are to Title and Section numbers

PLEADINGS (Continued)
Waiver as affirmative defense, M. R. Civ. P., Rule 8(c)
Waiver of defenses by failure to plead, M. R. Civ. P., Rule 12(h)

PLEDGES
See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507
Definition of term, 19-103

PLUMBERS
Act not to require employment of licensed plumbers, 66-2415
Board of examiners renamed and transferred to department of professional and occupational licensing, 82A-1602
appointment of members, 66-2403
continuation in office or replacement of board members, 82A-1606
duties, 66-2403
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
members, 66-2403
retention of functions by board, 82A-1605
term of members, 66-2403
Declaration of public interest, 66-2412
Fee on fixtures installed by plumbers, 66-2427
Licensing
bond required of master plumber, 66-2405
examination of licensees, 66-2402
experience required of licensees, 66-2402
fees received for licenses, deposit and use, 66-2407
required when working in city or town unless excused by governing body, 66-2401
Minimum standards
exceptions from act, 66-2426
inferior installations, restraining, 66-2417
municipal ordinances, power to adopt rules and regulations, 66-2424
prescribing, 66-2416
revocation or suspension of license for work below minimum, 66-2419
hearing, 66-2422
initiation, 66-2420
judicial review, 66-2423
procedure, 66-2420
process, service, 66-2421
state plumbing code, adoption, 66-2416
effective date, 66-2425
State plumbing board
board of plumbing examiners constitutes, 66-2413
chairman, 66-2414
employees, 66-2414
rules and regulations, 66-2414

PODIATRISTS
See CHIROPODISTS, 66-601 to 66-611

POISONS
Pesticides, 27-213 to 27-245—See PESTICIDES

POLICE COURTS
Criminal cases, proceedings, 95-2001 to 95-2009—See CRIMINAL PROCEDURE, Police courts
Criminal jurisdiction, 95-303
Disqualification of judge, requirements and procedure, 95-1709
Fines for city ordinance violations tried on appeal, disposition of, 95-2008.1
Judges, salaries, 11-726

POPULAR SOVEREIGNTY
Political power vested in and derived from the people, 1972 Const., II, 1

POST-ENEMY-ATTACK PROVISIONS
Continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
Resource management, 77-1501 to 77-1508—See WAR, Resource management

POTATOES
Grading of potatoes, 3-1404

POULTRY
Advisory board abolished, 82A-305

POVERTY RELIEF
See PUBLIC WELFARE, Economic opportunity and poverty relief, 71-1601 to 71-1604

PREDATORY ANIMALS
Advisory committee abolished, 82A-1305
Levies on livestock and commodities authorized for predator control, 1972 Const., XII, 1

PRELIMINARY EXAMINATION
See CRIMINAL PROCEDURE, Preliminary examination, 95-1201 to 95-1204

PRESUMPTION
Legality of rules, orders, findings, etc., of industrial accident board under occupational disease act, 92-1360

PRETRIAL CONFERENCE
Conduct and scope of conference, M. R. Civ. P., Rule 16

PRETRIAL MOTIONS
Criminal procedure, 95-1701 to 95-1710—See CRIMINAL PROCEDURE, Pretrial motions

PRINCIPAL AND INCOME ACT
Act to govern ascertainment of principal and income and apportionment of receipts and expenses, 67-1902
Animals, offspring of, 67-1908
Application to estates created after effective date, 67-1916
Bonds or obligations, 67-1906
Business, operation of, 67-1907
Coverage of act, 67-1902
Death of tenant between payment dates, apportionment, 67-1904
Definitions, 67-1901
Delayed income, 67-1911
Depletion of property, 67-1910
Expenses
  apportionment, 67-1912
  expenses where no trust created, 67-1913
  improvement, 67-1913
Income
  corporate dividends, when, 67-1905
  definition, 67-1901
  receipts constitute, 67-1903
Interpretation of act, uniformity, 67-1914
Natural resources, 67-1909
Net profits derived from operation of business, 67-1907
Offspring of animals, 67-1908
Principal
  change in form of investment of unprofitable principals, 67-1911
  corporate dividends, when, 67-1905
  definition, 67-1901
  loss or gain on sale of bonds or obligations, 67-1906
  property subject to depletion, 67-1910
  receipts constitute, 67-1903

PRINCIPAL AND INCOME ACT (Continued)
"Remainderman" defined, 67-1901
Severance of natural resources, 67-1909
Short title of act, 67-1915
Stock dividends, 67-1905
"Tenant" defined, 67-1901
"Trustee" defined, 67-1901
Uniform principal and income act, 67-1915

PRINTING
County printing, 16-1225 to 16-1233—See COUNTIES, Printing
Definition, 19-103.1
State printing
certification of printer as to prices and rates, 82-1152
claim for printing, approval by state controller, 82-1910
penalty for violations of act, 82-1138
preference to Montana printers, 82-1137
union label required, exceptions, 82-1137
wages and working conditions required of contractors, 82-1137

PRISONS AND PRISONERS
See also JAILS
Escape from prison, venue of prosecution, 95-409
Interstate agreement on detainers, text and enactment, 94-1101-1, redes. 95-3131
co-operation of public agencies in enforcement, 94-1101-3, redes. 95-3133
co-ordinator of agreement, appointment and duties, 94-1101-6, redes. 95-3136
delivery of prisoner by institution on detainer, 94-1101-5, redes. 95-3135
district courts to function under agreement, 94-1101-2, redes. 95-3132
escape from custody on detainer, penalty, 94-1101-4, redes. 95-3134
Post-conviction hearing, 95-2601 to 95-2608—See CRIMINAL PROCEDURE, Post-conviction hearing
Prisoner furlough program
administrative rules, 95-2223
agent, employee or involuntary servant, prisoner not considered as, 95-2224
application by prisoner, 95-2220
consideration, 95-2221
cancellation and revocation of furlough, 95-2226
co-operation by state agencies, 95-2223
definitions, 95-2218
earnings of prisoner, 95-2222
furlough plan, 95-2221
parole eligibility unaffected, 95-2225
privileges under, 95-2219
purpose and intent, 95-2217
sheriff's consent, no prisoner to be released without, 95-2221
sheriff's responsibility for prisoner, 95-2226
warden to establish, 95-2219
Review of legal sentences, review division of supreme court, 95-2501 to 95-2504
Sentence and judgment, 95-2201 to 95-2216; 95-2301 to 95-2312—See CRIMINAL PROCEDURE, Sentence and judgment
State prison
board of state prison commissioners continued, 82A-208
functions transferred to department of administration, 82A-203
contracts for confinement of inmates in other institutions, 80-1907
criminal identification bureau, 80-2001 to 80-2006—See BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION
death of prisoner, payment of inquest costs, 16-3410
discharge of prisoner, clothing and money furnished, 80-1906
good time allowance for inmates, 80-1905
hours of work for employees of prison, 80-1903
industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
intensive rehabilitation center, 80-1909 to 80-1911
location of prison, 80-1901

References are to Title and Section numbers

PRISONS AND PRISONERS (Continued)
State prison (Continued)
management and control of prison, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
motor vehicle functions transferred, 82A-1205
punishment of inmates, restrictions on, 80-1904
purpose of prison, 80-1901
state hospital, commitment and temporary transfer of inmate to, 80-1908
transfer of prisoners under 21 to department of institutions, 80-2210
warden, qualifications, 80-1902
weapons, possession by prisoner, penalty, 94-3527.1
Venereal disease, examination and treatment of prisoners for, 69-4606
Western Interstate Corrections Compact, 95-2308 to 95-2312
Work release program, 95-2216

PRIVACY RIGHTS
Constitutional right of individual privacy, 1972 Const., II, 10
Recording of conversation without knowledge of parties as misdemeanor, 94-35-274
exemptions from general prohibition, 94-35-275

PRIVIES
Cleaning of privies, 69-5401 to 69-5408—See SANITARY LICENSEES

PRIVILEGED COMMUNICATIONS
News media, information source, 93-701-4
Psychologist and client, 66-3212
Venereal disease infection, information concerning, 69-4610

PROBATE PROCEEDINGS
Discovery procedures applicable, M. R. Civ. P., Rule 1
Rules of civil procedure, application to probate proceedings, M. R. Civ. P., Rule 81(a), Table A

PROBATION, PAROLE AND CLEMENCY
Administrator replacing director, 82A-804
appointment and compensation, 94-9825, redes. 95-3207
Board of pardons
biennial report to governor, 94-9824, redes. 95-3206
continuation as quasi-judicial board in department of institutions, 82A-804
court to transmit statistical data following sentence and judgment, 95-2210
expenses of board, payment and reimbursement, 94-9826, redes. 95-3208
officers and employees of board, employment and compensation, 94-9825, redes. 95-3207
Criminal procedure, sentence and judgment, 95-2201 to 95-2216—See CRIMINAL PROCEDURE, Sentence and judgment
Definitions, 95-3205
Executive clemency, governor's power, 1972 Const., VI, 12
board to investigate, advise and approve, 95-3223
hearing on application, order of board, form, publication, 95-3224
publication not necessary in certain cases, 95-3228
retaking or re-incarceration of parolee or probationer, procedure, 95-3202.1
administrator of interstate compact as hearing officer, 95-3202.2
record of hearing in another state, effect in Montana, 95-3202.4
rights of parolee or probationer on hearing, 95-3202.3
Juvenile probation officers, travel expenses, reimbursement for, 10-622
Pardon as restoring civil rights of offender, 95-2227
Prisoner for whom warrant issued but cannot be served deemed fugitive, 95-3220
Return of parole violator, arrest, hearing, 95-3220

PROCESS
Amendment of process, when permitted, M. R. Civ. P., Rule 4 D(7)
Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Motion to raise question of insufficiency, M. R. Civ. P., Rule 12(b)

References are to Title and Section numbers

PROCESS (Continued)
Service, M. R. Civ. P., Rule 4 D—See SERVICE OF PROCESS
Summons, M. R. Civ. P., Rule 4 C—See SUMMONS

PROFESSIONAL SERVICE CORPORATIONS
Advertising prohibited, 15-2112
Annual report, required contents, 15-2115
Business of corporations restricted to professional services, 15-2108
Capital stock, restrictions on holdings, 15-2109
Citation of act, 15-2102
Consolidation and merger of corporations, restrictions, 15-2114
Definition of terms, 15-2103
Directors, number required, 15-2113
Disqualification of agent to practice profession, severance of connection with corporation, 15-2110
Dissolution of corporation for noncompliance, 15-2110
Ethical standards for professional conduct unimpaired by act, 15-2107
General corporation law, application, 15-2114
Individual liability for professional acts unaffected by incorporation, 15-2107
Investment of surplus funds permitted, 15-2108
Legislative intent, 15-2101
Liability of corporation for acts of agents while rendering professional services, 15-2107
Previously existing corporations, application of act to, 15-2104
Property ownership restricted to that necessary for professional services, 15-2108
Purposes for which corporations organized, 15-2105
Redemption of shares by corporation, provision for, 15-2111
Regulatory acts unaffected by act, 15-2116
Securities law unaffected by act, 15-2116
Services to be rendered through licensed officers and agents, 15-2106
Short title of act, 15-2102
Transfer of shares, restrictions on, 15-2111
Voting trust agreements prohibited, 15-2109

PROHIBITION
Rules of civil procedure, application to proceedings, M. R. Civ. P., Rule 81(a), Table A

PROMISSORY NOTES
See COMMERCIAL PAPER, 87A-3-101 to 87A-3-805

PROPERTY
Coroner, disposition of property found on body, 95-810
Homestead and exemption laws required, 1972 Const., XIII, 5
Pension trusts
  statutory and common law limitations inapplicable to, 67-423
  validity, 67-424
Perpetuities prohibited except for charitable purposes, 1972 Const., XIII, 6
Personal property
  accessions to personal property, effect of Uniform Commercial Code, 67-1410
  partition or sale authorized, 93-6301.1
    county in which action shall be brought, 93-6301.1
    procedure, 93-6301.2
Principal and income act, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT
Real property
  action for damages from construction of improvements, statute of limitations, 93-2619 to 93-2623
  co-ordinate system used in describing property, 67-2011 to 67-2019—See CO-ORDINATE SYSTEM
  corner recordation
    certification and signing of records filed, 67-2009
    citation of act, 67-2001
    county clerk and recorder, duties concerning filing, 67-2007

PROPERTY (Continued)
Real property (Continued)
corner recordation (Continued)
definition of terms, 67-2003
form and contents of filing prescribed by board, 67-2006
permitted filing of property corners, 67-2005
previously established corners, filings concerning, 67-2010
purpose of act, 67-2002
reconstruction and rehabilitation of monument, 67-2008
required filing of corners and monuments established, 67-2004
fixtures, priority of security interest, 87A-9-313
inducing engagement as advertising agency for sale of real property by misrepresentation of service, penalty, 94-1822
joint tenancy created by direct conveyance, 67-1602.1
licensees for recreational purposes, restricted liability to, 67-808
definition of recreational purposes, 67-809
liens excluded from Uniform Commercial Code, 87A-9-104
persons who may purchase state lands, 81-908
subdivided lands, sale or lease outside state
additional information required by commissioner, 67-2105
fee for filing of questionnaire, 67-2106
blanket encumbrances
definition, 67-2109
protection of purchasers and lessees, provisions for, 67-2110
bond for protection of purchasers and lessees, 67-2110
change of address or depository, notice to commissioner, 67-2113
contracts for sale of property, required contents, 67-2111
desist and refrain orders, 67-2114
escrow arrangements for protection of purchasers and lessees, 67-2110
fees payable to commissioner
deposit and use of fees, 67-2106
notice of intention, filing fee, 67-2104
questionnaire filing fee, 67-2106
findings of commissioner not to be used in advertising, 67-2108
inspection of records by commissioner, 67-2113
investigation by commissioner of subdivisions offered, 67-2107
multiple sales or leases, notice to commissioner, 67-2112
notice to commissioner of intention to offer lands, contents, 67-2103
rules and regulations, 67-2102
size of tracts to which act applies, 67-2101
statute of limitations, application to actions arising from, 67-2115
title held in trust for protection of purchasers and lessees, 67-2110
tracts to which act applies, 67-2101
violations construed as misdemeanors, 67-2116
subdivided lands situated outside state, sale or disposition within state
civil remedy, 67-2132
exemptions, 67-2119
penalties, 67-2131
prohibitions, 67-2120
real estate commission as administrative agency, 67-2118
agency's powers and duties, 67-2126 to 67-2128
judicial review, 67-2130
registration, 67-2121 to 67-2124
revocation of registration, 67-2129
subdivider's annual report, 67-2125
unit ownership of buildings
access to units for maintenance and repair work, 67-2311
actions to enforce rights under act, 67-2338
alterations jeopardizing property prohibited, 67-2309
blanket mortgages and liens, release on conveyance or lease of unit, 67-2323
bylaws, adoption, recording and amendment, 67-2320
compliance with bylaws required of unit owners, 67-2313
contents of bylaws, 67-2321

References are to Title and Section numbers

PROPERTY (Continued)
Real property (Continued)
unit ownership of buildings (Continued)
common elements of building
access to units to prevent damage to common elements, 67-2311
expenses for common elements, charging to unit owners, 67-2308
foreclosure of liens for common expenses, 67-2327
grantor and grantee jointly liable for unpaid expenses, 67-2330
liability for contributions not to be avoided by waiver, 67-2312
lien of association for common expenses, 67-2326
purchaser at foreclosure sale not liable for expenses, 67-2329
records and accounts of expenses, 67-2325
rent paid by unit owner after foreclosure of lien, 67-2328
maintenance of common elements as provided by bylaws, 67-2311
partition of common elements prohibited, 67-2307
percentage of common elements held by unit owners, 67-2306
profits from common elements, distribution, 67-2308
separation from unit ownership prohibited, 67-2307
undivided interest held by unit owners, 67-2306
use of common elements, rights of unit owners, 67-2310
compliance by unit owners with bylaws, rules and regulations, and covenants required, 67-2313
conveyance or lease of individual units permitted, 67-2304
contents of deed or lease, 67-2322
damage to or destruction of building, repair, reconstruction or removal from act, 67-2334
declaration required to subject building to unit ownership, 67-2303
agent of department of revenue to approve declaration before recording, 67-2317
contents of declaration, 67-2314
definition of declaration, 67-2302
preliminary declaration, filing, 67-2315
recording of declaration and certified copy, 67-2318
definition of terms, 67-2302
encumbrance of individual units permitted, 67-2304
exclusive ownership and possession of individual units, 67-2305
exemptions from execution, application to units, 67-2341
floor plans recorded with declaration, contents, 67-2319
injunctive relief against violations, 67-2343
insurance of building against loss or damage, 67-2331
investigation of violations by department, 67-2343
liens against units, manner of attachment and release, 67-2324
blanket lien, release from on conveyance or lease of unit, 67-2323
common expenses, lien for, 67-2326
foreclosure of liens for common expenses, 67-2327
purchaser at foreclosure not liable for common expenses, 67-2329
rent payable by unit owner after foreclosure of lien, 67-2328
mortgage of individual units permitted, 67-2304
name of property, restrictions on, 67-2316
obsolete property, renewal, restoration or sale, 67-2333
organization of unit owners prescribed by bylaws, 67-2321
preliminary declaration filed before construction, 67-2315
recording of declaration, 67-2318
removal of property from provisions of act
common ownership by unit owners results, 67-2335
lienholders' consent required, 67-2332
partition proceedings by unit owner after removal, 67-2336
resubmission to act permitted after removal, 67-2337
renewal and restoration of obsolete property, 67-2333
sale of building after removal from act, 67-2336
sale of individual units permitted, 67-2304
sale or lease of units prior to completion of construction, 67-2303.1 to 67-2303.6
changes in building plans, refund of purchaser's funds, 67-2303.4
contract of sale not binding until purchaser receives final report, 67-2303.4, 67-2303.6

References are to Title and Section numbers

PROPERTY (Continued)
Real property (Continued)
unit ownership of buildings (Continued)
sale or lease of units prior to completion of construction (Continued)
deposit of proceeds in escrow, 67-2303.1 (1)
disbursements from escrow fund, restrictions on, 67-2303.1 (2) to (4)
examination of project by department following notice of intent to sell, 67-2303.3
fees to be paid by developer, 67-2303.2
final report of department, requirements for, 67-2303.5
notice of intention to sell by developer, 67-2303.2
service of process with respect to two or more units, 67-2338
agent to receive process named in declaration, 67-2314
change of agent for service of process, 67-2339
short title of act, 67-2301
taxation of units, 67-2340
exemptions from taxation, application, 67-2341
rules and regulations for appraisal and assessment, 67-2342
violation as misdemeanor, punishment, 67-2344
Right of persons to acquire, possess and protect, 1972 Const., II, 3
Search and seizure, disposition of seized property, 95-1712 to 95-1716
State liability for injury to person or property, 1972 Const., II, 18
Unclaimed property
attorney-general to assist in regulation, 67-2226
bank deposits and funds, when presumed abandoned, 67-2202
business association deposits and funds, when presumed abandoned, 67-2202
checks, deposits and money orders, when presumed abandoned, 67-2202
citation of act, 67-2230
claim for property delivered to department of revenue, filing, 67-2219
hearing and determination of claim, 67-2220
judicial review of department's determination, 67-2221
conflict of laws, 67-2227
cooperative association distributions, when presumed abandoned, 67-2205
corporate stock or distributions, when presumed abandoned, 67-2205
court, when property held by presumed abandoned, 67-2208
definition of terms, 67-2201
delivery of property to department of revenue, 67-2213
action to compel delivery, 67-2224
dissolution of corporate enterprise, when distributions presumed abandoned, 67-2206
examination of records of persons required to report, 67-2223
fiduciary property, when presumed abandoned by beneficiary, 67-2207
income or increment after delivery to department, owner not entitled to, 67-2215
insurance funds, when presumed abandoned, 67-2203
limitation statutes not affecting duties under act, 67-2216
money orders, when presumed abandoned, 67-2202
nonresident owner, reciprocal provisions eliminating presumption of abandonment, 67-2210
notice by department to apparent owner, contents, 67-2212
payment of funds to department, 67-2213
penalties for violations of act, 67-2225
presumption of abandonment for property not otherwise covered, 67-2209
publication of lists by department, contents, 67-2212
public officer or agency, when property held by presumed abandoned, 67-2208
refunds by department after payment by holder to another, 67-2214
relief from liability by payment or delivery to department, 67-2214
report by custodian to department, contents and filing, 67-2211
rules and regulations, 67-2226
sale of property by department, 67-2217
disposition of proceeds of sale, 67-2218
seized property in criminal cases, disposition of, 95-716
severability of provisions of act, 67-2228
short title of act, 67-2230
small amounts, declination or postponement of possession by department, 67-2222
uniformity of interpretation of act, 67-2229
utility deposits and refunds, when presumed abandoned, 67-2204
Unsolicited goods deemed a gift, 67-1706.1

References are to Title and Section numbers

PSYCHOLOGISTS

Appeals from board of examiners to district court, 66-3210
Board of examiners, creation, appointment and terms of members, 66-3204
  additional powers and duties of board, 66-3207
  attorney general assisting board, 66-3205
  employment of personnel, 66-3205
  expenses of board members, 66-3205
  meetings of board, 66-3205
  recommendations to governor and state officials, 66-3207
  report to governor, 66-3205
  seal of board, 66-3205
Complaints against licensees, hearing by board, 66-3207
Definition of terms, 66-3202
Exempt activities of psychological nature, 66-3203
Injunction against unlawful practice, 66-3214
  board power to prosecute, 66-3207
Insurance coverage not to restrict freedom of choice of practitioner, 40-4108
Legislative findings on practice, 66-3201
License required to practice psychology, 66-3203
  application for license, 66-3208
  examination of applicants for license, 66-3206
  exempt activities, 66-3203
  expiration and renewal of licenses, 66-3206
  fees for licenses and renewals, 66-3211
  injunction against unlawful practice, 66-3214
  issuance of license, 66-3206
  list of licensees published annually, 66-3206
  out-of-state licensees, issuance without examination, 66-3208
  qualifications of licensees, 66-3208
  revocation or refusal of license, grounds, 66-3209
    appeal to district court, 66-3210
    board power, 66-3207
    notice and hearing on refusal or revocation, 66-3210
List of licensed psychologists, annual publication, 66-3206
Malpractice, statute of limitations, 93-2624
Penalties for violation of act, 66-3213
Practice of psychology, definition and scope, 66-3202
  drugs, surgery and shock therapy not authorized, 66-3214
Privileged communications between psychologist and client, 66-3212
  school psychologist and student, 93-701-4
Purpose in regulating practice, 66-3201
Rules and regulations, 66-3205
Social psychologists, persons authorized to use term, 66-3203
Studies and research by board, 66-3207
Violation of act, penalty for, 66-3213
  prosecution by board, 66-3207

PUBLIC ACCOMMODATIONS

Discrimination, freedom from as civil right, 64-301
  definition of terms, 64-302
  denial of accommodations as misdemeanor, 64-303
Fraud, obtaining accommodations with intent to defraud, penalty, evidence of intent, 94-1831

PUBLIC ACCOUNTANTS

Annual licenses, 66-1833
Board of public accountancy renamed and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  appointment and terms of board members, 66-1813
  compensation of board members, 66-1815
  continuation in office of board members, 82A-1606
  employment of personnel for board, 82A-1604

PUBLIC ACCOUNTANTS (Continued)
Board of public accountancy (Continued)
legal assistance in hearings by board, 82A-1604
moneys received by board, disposition, 66-1816
organization of board, 66-1815
qualifications of board members, 66-1814
retention of functions by board, 82A-1605
rule-making powers of board, 66-1817
Certified public accountants, 66-1819, 66-1822 to 66-1825
Disciplinary proceedings, 66-1834 to 66-1837
Examination of applicants for certification, 66-1818
Partnerships, registration of
certified public accountant, 66-1829
public accountant, 66-1831
Registration, 66-1820, 66-1821
Unlawful acts, 66-1838
exceptions, 66-1839
misdemeanor penalty, 66-1840

PUBLICATION
Freedom of speech, expression, and press, 1972 Const., II, 7
Legislative proceedings, sale of copies, 43-901 to 43-904—See LEGISLATURE, Publication of proceedings
State publications distribution center, 44-132 to 44-139—See LIBRARIES

PUBLIC BUILDINGS
Architects to carry errors and omissions insurance, 66-114
Construction programs for state buildings
architects and consulting engineers, appointment, 82-3319
restrictions on architectural work by state, 82-3320
buildings subject to control, 82-3314
definition of terms, 82-3314
emergency repairs and alterations authorized by governor, 82-3316
legislative consent, when required for construction, 82-3316
pecuniary interest prohibited to controller and employees, 82-3321
powers of controller in supervising construction, 82-3318
submission of programs to controller, governor and legislative assembly, 82-3315
supervision of construction by controller, 82-3317
university buildings, authority of regents and governor, 82-3316
Contracts to be let by competitive bidding for construction or improvement, 82-1131
institutions exempt, 82-1131.1
Heating, native coal preferred, 82-1904.1
use of other fuels not prohibited, 82-1904.2
Insurance proceeds from damaged buildings, deposit and use, 78-1101
Sanitary inspections and correction of conditions by boards of health, 69-4118
Space assignment by department of administration, 82-3308
State capitol improvement and repair, 78-737 to 78-746—See STATE CAPITOL, Building improvement and repair

PUBLIC CONTRACTORS
See also STATE PURCHASING DEPARTMENT AND AGENT
Incomplete contracts, additional bids limited, 82-1927
bid to show bidder not working beyond contract time, 84-3507
excusable delays exempt, 82-1928
Licenses
additional license fees, 84-3505
penalty for failure to file license return, 84-3516
refunds of overpayments, 84-3513
rules and regulations, board of equalization to establish, 84-3515
tax credits allowed, 84-3514
withholding of payments, 84-3513
bids to show license number and class, 84-3507
classes of licenses, 84-3505

PUBLIC CONTRACTORS (Continued)
Licenses (Continued)
definition of terms, 84-3501
residency for preference, determination of, endorsement upon license, 82-1925.1
Preference to Montana bidders
contract provision for preference to Montana materials and labor, 82-1926
definition of residence, 82-1925
determination of residency by state board of equalization, 82-1925.1
federal aid projects, application to, 82-1926
percentage differential, 82-1924
Substitution of governmental obligations for withheld payments due contractors, 82-4101 to 82-4104

PUBLIC DEFENDERS
Authority of counties to establish and maintain offices, 95-1006

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Actuarial valuation of assets and liabilities to be made biennially, 68-1804
rate of interest earned on retirement fund to be determined periodically, 68-1804
Board of administration continued in department of administration, 82A-210
annual report to governor, contents, 68-1803
appointment of committee authorized, 68-1801
attorney general as legal counsel, 68-1801
compensation of administrator and employees, 68-1801
election of president, 68-1801
employment of actuary authorized, duties, 68-1804
highway patrol functions transferred to board, 82A-211
investment functions transferred, 82A-205
office, location, 68-1801
per diem and expenses of members, 68-1802
powers and duties generally, 68-1803
quorum of board, 68-1801
rules and regulations, 68-1803
Change of status of employees, report by employers, 68-2512
Contracts with municipalities, counties or public agencies for participation in system, 68-1701 to 68-1704
approval of contract by legislative body, vote required, 68-1701 (1)
contents and formal requirements of contract, 68-1701
conversion of local or state retirement plan, 68-1703
majority vote of affected employees required, 68-1701 (1)
request for participation by individual employee, duties of legislative body, 68-1702
resolution of intent to be adopted by legislative body of contracting employer, 68-1701 (1)
special tax levy to meet employer's obligation under system, 68-1704
Contributions
administrative expense contributions of employer, 68-1904
employer contributions, rates, actuarial determination, 68-2504
adjustment of errors, 68-2509
Budget Act superseded, 68-2508
departmental budgeting and appropriation of funds, 68-2505
municipal, county or public agency employer, tax levy to meet obligations, 68-1704
payment of employer contributions, 68-2505, 68-2507
transfers between funds, 68-2506
member contributions, rate, deduction from salary or wage, 68-1902
additional member contributions for additional benefits, 68-1903
redeposit of contributions upon reinstatement of membership, 68-1906
refund of contributions upon termination of service, 68-1905
Cost of living increases in benefits, 68-2513
Creation and establishment of system, 68-1502
Criminal investigator's office covered, 82-418
Death benefits
amount, 68-2302

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (Continued)
Death benefits (Continued)
beneficiaries, 68-2401, 68-2402
beneficiary designated, 68-2401 (1)
estate as beneficiary, 68-2401 (1)
minor beneficiaries, 68-2402
next of kin, order of payment, 68-2401 (1) (2)
undertaker, direct payment to, 68-2401 (3)
eligibility, 68-2301
estimate of allowance by board, when authorized, 68-2503
exemption from legal process, 68-2502
optional benefits, election by beneficiary, 68-2303
survivorship allowance in lieu of other benefits, 68-2304, 68-2305
amount of allowance, 68-2305
eligibility, 68-2304
monthly installments, when combining authorized, 68-2501
Definition of terms, 68-1503
Disability retirement
amount of allowance, 68-2103, 68-2104
duty-related disability, 68-2103
nonduty-related disability, 68-2104
workmen's compensation reduction for duty-related disability, 68-2103
application for allowance, time of filing, 68-2102
cancellation of allowance, grounds, reinstatement of recipient, 68-2201
failure to re-employ following cancellation as discontinuance of employment, 68-2201
re-employment, recalculation of benefit, 68-2204
commencement of allowance, 68-2102
conversion of allowance to optional benefits, 68-2203
definition of terms, 68-2101
determination of disability by board, 68-2101
eligibility, 68-2101
estimate of allowance by board, when authorized, 68-2503
exemption of allowance from legal process, 68-2502
medical examination may be required of recipient, 68-2201
refusal to submit as ground for cancellation of allowance, 68-2201
monthly payments, combining installments, 68-2501
reduction of allowance by earnings, 68-2202
Dormant savings accounts transferred to pension accumulation fund, 68-1907
Excess administrative expense as charge to appropriation from general fund, 68-1802
Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws
Judges' retirement fund, payments into, investment, 93-1111
Membership in system, persons included, 68-1601
exclusions from membership, 68-1602
federally subsidized employees, 68-2510
"member" defined, 68-1503
municipal, county or public agency employees, 68-1701 to 68-1704
national guard employees, 68-2510
re-entry into service, 68-1601
seasonal employees, 68-1601
termination of membership, 68-1603
Previously conferred benefits retained, 68-2514
Purpose of law, 68-1501
Retirement fund
contributions to fund, 68-1902 to 68-1904, 68-2504 to 68-2507—See Contributions, above
administrative expense contributions, 68-1904
employer contributions, rates, 68-2504
member contributions, 68-1902, 68-1903
dormant savings accounts transferred to pension accumulation fund, 68-1907
income to be retained in fund as reserve against contingencies, 68-1901
interest in or borrowing from fund by member or employee prohibited, 68-1901

References are to Title and Section numbers

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (Continued)
Retirement fund (Continued)
investment of fund, 68-1901
management of fund, 68-1901
state treasurer as custodian, 68-1901
Service credits
absence from compensated employment, time not allowed, 68-1604
cancellation of credit upon refund of contributions, 68-1603
conversion of service to creditable service, procedure, payment of contributions, 68-1607
"creditable service" defined, 68-1503 (28)
illness or injury, credit for absence due to, 68-1606
military service, credits for, 68-1605
election to qualify for full credit, 68-1605.1
prior service not previously credited, 68-1608
school district employees, absence during official vacation, 68-1601
teachers' retirement system, transfer of credits to and from, 68-2511
amount of allowance, computation, 68-2003
prior service adjustment, 68-2004
commencement of allowance, 68-2002
conversion of allowance to optional benefits, 68-2003
early retirement, eligibility, 68-2001
amount of allowance, 68-2005
eligibility, 68-2001
estimate of allowance by board, when allowed, 68-2503
exemption of allowance from legal process, 68-2502
monthly payments, combining installments, 68-2501
re-employment following retirement, recalculated benefit, 68-2204
Short title, 68-1504
Vehicle equipment safety commission employees, agreement for coverage, 32-21-170

PUBLIC FINANCE
Bonds of political subdivisions, maximum interest paid, 79-2602
definition of terms, 79-2601
Bond validating act
definitions, 79-2002
pending actions, act inapplicable to, 79-2004
short title, 79-2001
validating provisions, 79-2003
Budget—See State finance, state budget act, below
Cities and towns, resolution to issue bonds, when election required, 11-2307.1
County bond issues—See COUNTIES, Bond issues
Expenditures, strict accountability of state and local governmental entities, 1972 Const., VIII, 12
appropriation and issuance of warrant required, 1972 Const., VIII, 14
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials
Highway revenues, restrictions on use, 1972 Const., VIII, 6
Indebtedness
city, town, township, school district or high school district, 1889 Const., XIII, 6
local government debt limitations fixed by legislature, 1972 Const., VIII, 10
state debt, vote required for creation of, creation to cover deficits prohibited, 1972 Const., VIII, 8
Investment of public funds, 1972 Const., VIII, 13
Legislative audit committee and legislative auditor, 79-2301 to 79-2313—See LEGISLATIVE AUDIT ACT
Limitation of actions and defenses relating to issuance of bonds, 93-2612
Moneys received from federal government under flood control act
distribution to counties, 79-2101
expenditure of funds by counties, 79-2102
Post war planning and construction reserve fund abolished, 79-416
Revenue bond refunding bonds, terms and negotiability, 79-1905

References are to Title and Section numbers

PUBLIC FINANCE (Continued)
Road and bridge bonds, 32-3801 et seq.—See HIGHWAYS, BRIDGES AND FERRIES, County bonds
Special assessments levied by political subdivisions, rate of interest, 79-2603
State budget act, inapplicable to certain work on state capitol and supreme court and law library building, 78-1209
State controller—See STATE CONTROLLER
State finance
appropriation accounting procedures established by state controller, 82-109
appropriations not to exceed anticipated revenue, 1972 Const., VIII, 9
budget—See state budget act, below
claims against the state
assignment of claims, 83-901 to 83-904
authorization for payment given by department head, 82-109.1
certification by head of department, 82-109.1
disapproval by controller, appeal to board of examiners, 82-109.3
forms prescribed by state controller, 82-109.3
order of processing of claims, 82-109.3
pre-audit of liquidated claims, 82-109.2
records maintained by departments, 82-109.1
tort claims, 82-4301 to 82-4327—See STATE OF MONTANA, Tort claims
unliquidated claims, transmittal to board of examiners, 82-109.2
contingent revolving accounts for state institutions and agencies, 79-602
deposit of receipts by state agencies with treasurer or depository, 79-306, 82-110
depositories of state funds
board continued in department of administration, 82A-209
investment functions transferred, 82A-205
bonds and securities pledged as collateral, 79-306
deposits by state agencies with depositories, 79-306
securities acceptable as pledge for deposits, 79-307
substitution of collateral by depository, 79-301
emergency and disaster expenditures authorized by governor, 79-2501
implementation and administration of program, 79-2503
maximum expenditure in biennium, 79-2502
expenditures in excess of income prohibited, 79-901
penalty for violations, 79-904
expert on financial matters, appointment by board of land commissioners, salary for services, 79-1202
fire insurance fund abolished, 79-416
institutional support
appropriation of income from endowments and grants for support of institutions, 79-601
contingent revolving accounts, establishment by controller, 79-602
retention of income and deposits by institutions, 79-603
investment of funds, unified plan, 1972 Const., VIII, 13; 79-308 to 79-311
accounting for and maintenance of separate funds, 79-309
account of each investment fund to be kept by state treasurer, 79-308
administration by board of investments, powers, 79-308
board of investment created, 82A-204
functions transferred to board, 82A-205
criteria for investment, 79-308
deduction of cost from income, 79-308
local government funds, investments of, 79-311
permissible investments, 79-310
permanent grants to state institutions
disbursement of funds, 79-1402
income and interest moneys to be used for payment of claims, 79-1403
receipts, monthly deposit required, 79-1401
purchase orders and accrued expenses, encumbering and reappropriation of funds for, 59-701.1
refunding bonds or debentures, nature of issuance, 79-1802
refund of moneys paid into treasury through error, 79-415
refunds by state, minimum amounts, 82-110

References are to Title and Section numbers

PUBLIC FINANCE (Continued)
State finance (Continued)
retention of income and deposits by state agencies, 79-603
salary schedules maintained by controller, 82-109.4
state budget act
blanks for preparation of budget estimates
distribution, 79-1013
duty of department, institutions and agencies, 79-1013
budget director's position abolished and functions transferred to department, 82A-202
duties, 79-1017
inquiries and investigations by, 79-1016
power to demand and receive information from state departments and officers, 79-1018
state controller as ex officio budget director, 79-1012
budget message, 1972 Const., VI, 9; 79-1015
Capitol and Supreme Court and Law Library Building Act inapplicable, 78-1209
detailed budget estimate, 79-1015
director of budget, appointment, 79-1012
division and parts of budget submitted to legislature, 79-1015
expenditures during first year of biennium from appropriation for second year, 79-1019
federal aid budget, procedure for approval, 82-112
general fund, reimbursement for costs of central services, 79-2401 to 79-2415
governor constituted chief budget officer, 79-1012
inquiries and investigations by budget director, 79-1016
preliminary budget, preparation, 79-1014
proposed budget bill, 79-1015
submission of budget to legislature, 79-1015
submission of preliminary budget to governor and governor elect, 79-1014
vehicle equipment safety commission budget, submission to director, 32-21-173
treasury fund structure
accounts within funds, creation and abolition by controller, 79-413
clearing and suspense accounts authorized, 79-412
disbursements from funds, appropriations, general laws or contracts authorizing, 79-415
enumeration and description of funds, 79-410
future laws or contracts requiring segregation of moneys, interpretation, 79-411
investment funds authorized under unified plan, 79-412
previous definitions of funds superseded, 79-411
purpose of act, 79-409
records of funds and accounts, maintenance by treasurer and controller, 79-414
short title of act, 79-409
special funds abolished and transferred to general fund, 79-416
temporary loans from account to account, 79-414
general fund, loans to, 79-415
uncollectible accounts, writing off, 82-110
unexpended appropriations, dispositions, 79-1011
unpaid obligations at end of fiscal year, encumbrances for, 59-701.2
purchase orders and accrued expenses, 59-701.1
warrants
order in which drawn, 79-104
required for payment of moneys by treasurer, 79-202

PUBLIC HEALTH
Clean Air Act, 69-3904 to 69-3923—See AIR POLLUTION CONTROL
Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
Definition of terms, 69-4102
Hearing aid dispensers, 66-3001 to 66-3023—See HEARING AID DISPENSERS
Occupational disease prevention, 69-4206 to 69-4221 — See OCCUPATIONAL HEALTH
Penalty for violation of health laws or rules, 69-5701
State department of health, 69-4101 to 69-4111—See DEPARTMENT OF HEALTH

References are to Title and Section numbers

PUBLIC HEALTH (Continued)
Tuberculosis—See TUBERCULOSIS
Violation of health laws or rules as misdemeanor, 69-5701

PUBLIC LANDS
See STATE LANDS

PUBLIC MILLS
Montana trade commission abolished and functions transferred, 82A-405

PUBLIC OFFICERS AND EMPLOYEES
Bonds required of state officers and employees
amount of bond required, determination, 6-106
companies permitted to write bonds, 6-107
competitive bidding for bonds required, 6-106
controller to purchase bonds, 6-105
form of bonds, approval, 6-105
group bonds permitted, 6-105
judicial employees exempt from general provision, 6-105
legislative employees exempt from general provision, 6-105
premiums, proration and payment, 6-108
Candidacy for public office during term authorized, 1972 Const., VI, 5
Code of ethics for officers and employees, 1972 Const., XIII, 4
Collective bargaining for public employees, 59-1601 to 59-1616
Administrative Procedure Act applicable, 59-1616
agreements to be in writing, contents, validity, 59-1610
statutory procedure for making agreement exclusive, 59-1610 (3)
arbitration, award enforceable, 59-1614
certification of labor organization as exclusive representative of public employees, procedure, 59-1606
board considerations, 59-1606 (2)
certification, 59-1606 (3)
election, 59-1606 (1) (3)
petition filed with board, 59-1606 (1)
check-off of dues upon written authorization of public employee, 59-1612
collective bargaining through exclusive representative as right of public employees recognized, 59-1603
"bargain collectively" defined, 59-1605 (3)
bargaining collectively in good faith as duty of parties, 59-1604
"exclusive representative" defined, 59-1602 (6)
prerogatives of public employers to be recognized, 59-1603 (2)
refusal to bargain collectively in good faith as unfair labor practice, 59-1605
representative of public employer, 59-1609
counsel for public parties to litigation, 59-1611
definition of terms, 59-1602
existing collective bargaining agreements not affected, 59-1615
fact-finding proceedings upon petition of either negotiating party, procedure, 59-1614
legislative authority not limited by act, 59-1605 (4)
legislative policy, 59-1601
mediation of dispute concerning collective bargaining agreement to be requested by negotiating parties, 59-1614
fact-finder as mediator, 59-1614 (8)
oaths and affirmations administered by board, 59-1613
right to join or form labor organization recognized, 59-1603
"labor organization" defined, 59-1602
labor organization responsibilities generally, 59-1603 (3)
requisites for certification of labor organization, 59-1603 (4)
rules and regulations of board, 59-1613 (4)
subpoena powers of board, 59-1613
unfair labor practices of public employer or labor organization, 59-1605
enforcement of board order in district court, 59-1608
remedies, hearing, procedure, 59-1607

PUBLIC OFFICERS AND EMPLOYEES (Continued)
Decision making process, public right of participation in, 1972 Const., II, 8
Duties of executive officers, 1972 Const., VI, 4
Election of executive officers, 1972 Const., VI, 2
Facsimile signatures of public officials
"authorized officer" defined, 59-1301
definitions, 59-1301
effect of facsimile signature, 59-1302
facsimile seal, use, 59-1303
"facsimile signature" defined, 59-1301
"instrument of payment" defined, 59-1301
"public security" defined, 59-1301
requirement before facsimile signature may be used, 59-1302
short title of act, 59-1306
uniformity of interpretation, 59-1305
use of facsimile signature in lieu of manual signature, 59-1302
violations of act with intent to defraud, felony, 59-1304
Group insurance for state employees, 59-1501 to 59-1507
approval of insurance by component group required, 59-1505
combining existing employee groups, 59-1504
component group negotiating insurance and health service corporation plan, 59-1505
costs of administration and negotiation, approval and payment, 59-1507
definition of terms, 59-1501
"employee" defined, 59-1501
employer contribution upon approval of insurance or plan, 59-1505
executive and legislative branches, combining employees of, 59-1504
negotiation and contracting for insurance and health service corporation plans by department of administration, 59-1502
advisory council to be created, composition, functions, meetings, 59-1503
rules of department, 59-1506
Holiday on employee's day off, compensatory time, 59-1009
Hours of work of salaried employees, 59-510
Impeachment, 1972 Const., V, 13; 95-2801, 95-2802—See IMPEACHMENT OF PUBLIC OFFICERS
Jury duty, leave without pay, 59-1010
excused upon request of employer, 59-1010 (3)
state officers exempt, 93-1304
Merit system council created and functions continued, 82A-206
Mileage allowance for travel in own vehicles, 59-801
liability for approval of excess amounts, 59-802
Oath of office, 1972 Const., III, 3
Other governmental employment prohibited during term of executive officers, 1972 Const., VI, 5
Per diem allowances while in travel status, 59-538
Personnel classification plan to be developed by department, 59-905
adjustment of classifications, appeal, 59-907
continuous review of positions by department, 59-907
definition of terms, 59-903
exemption of certain officers and employees, 59-904
functions and duties of department, delegation authorized, 59-913
guidelines for classification, 59-906
increase in salary or wage of class of employees, departmental authority required, 59-910
list of positions to be maintained by state agencies, contents, 59-908
merit systems established in certain agencies continued, 59-914
number and classes of employees in each agency to be determined by department, 59-909
amendment of determination, approval of governor required, 59-909
increase in number and class of positions, departmental authority required, 59-911
legislative amendment of determination, 59-909, 59-912
submission of determination to governor for approval or amendment, 59-909
policies to be established by department, notice, hearing, 59-913

References are to Title and Section numbers

PUBLIC OFFICERS AND EMPLOYEES (Continued)
Privately owned vehicle used in state business, restrictions on reimbursement, 53-517
Public employees' retirement act—See PUBLIC EMPLOYEES' RETIREMENT ACT
Qualifications of executive officers, 1972 Const., VI, 3
Removal from public office as provided by law, 1972 Const., V, 13
Residence of executive officers at seat of government, 1972 Const., VI, 1
Salaries—See SALARIES
Salary commission created, 59-1401 to 59-1404—See MONTANA SALARY COMMISSION
Salary schedules maintained by controller, 82-109.4
Separation of powers, 1972 Const., III, 1
Sick leave, allowance, accrual and administration, 59-1008
  definition of terms, 59-1007.1
Social security coverage authorized, 59-1103
  contribution account, sources, administration and use, 59-1105
  contributions fund, investment, 59-1105
  payment for, 59-1103
  plans for coverage of employees of political subdivisions, 59-1104
  school support funds liable for district's share of contributions, 59-1110
Successor, substitution as party in pending action, M. R. Civ. P., Rule 25(d)
Terms of executive officers, 1972 Const., VI, 1
  elected or appointed officers in office on effective date of new constitution, 1972 Const., Transition Schedule, sec. 6
Vacancy in executive office, how filled, 1972 Const., VI, 6
  assumption of office by appointee of governor prior to legislative confirmation, 59-605 (2)
  inability to discharge powers and duties of office, legislative declaration of vacancy, procedure, 59-609
Vacations, definition of terms, 59-1007.1
Witness, employee serving as, compensation, 59-1010

PUBLIC PROPERTY
Coal leases, county property, term, 16-1030
Lease of county property, 16-1030
Taxation of property subject to contract of sale or option to purchase, 84-204
  valuation and assessment of property, 84-205

PUBLIC RECORDS
Destruction of old county and school district records, 59-514
  fiscal records, destruction after period of years, 59-516
Financial documents, destruction authorized after 25 years, 59-516
Financing statements under Uniform Commercial Code, period for which retained, 59-516.1

PUBLIC SERVICE COMMISSION
Continuation of commission and functions, 82A-1702
Department of public service regulation created under commission, 82A-1701
Licensing of VHF booster or VHF translator systems for television—See TELEVISION
Railroad commissioners abolished and functions transferred, 82A-1703

PUBLIC UTILITIES
Consumer counsel to represent consumer interests before public service commission, funding by special tax, 1972 Const., XIII, 2; 70-701 to 70-709
  appointment of counsel, qualifications, compensation, 70-705
  definition of terms, 70-702
  fees, deposit and disposition, 70-709
    evasion of gross operating revenue fee, civil and criminal penalty, 70-709
    gross operating revenue fee of regulated companies, 70-709

PUBLIC UTILITIES (Continued)
Consumer counsel to represent consumer interests before public service commission (Continued)
legislative consumer committee created, composition, terms of members, election of officers, 70-703
meetings of committee, 70-704
per diem and expenses of members, 70-704
personnel, employment by counsel, 70-706
powers and duties, 70-707
reports to committee, 70-707
subpoenas, issuance by district court, 70-708
title of law, 70-701
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Highways, location of facilities along, 32-2414
costs paid by highway commission, 32-2415
definition of terms, 32-2416
Securities, issuance
exemption from Securities Act, 15-2013
order of commission authorizing issuance, 70-117.2
petition for issuance, contents and filing, 70-117.2
purposes for which issuable, 70-117.1
short term obligations issuable without commission approval, 70-117.3
state not obligated by authorization of issue, 70-117.6
subject to regulation and supervision by public service commission, 70-117.1
time allowed for disposition of applications, 70-117.4
unapproved securities void, 70-117.5
Sites for utility facilities, 70-801 to 70-823
certificate required for construction of facility, 70-804
additional requirements by other agencies prohibited following issuance of certificate, exceptions, 70-817
amendment of certificate, form and contents, 70-806 (6)
application, form, contents, time of filing, 70-806 (1)
documents to accompany application, 70-806 (1) (3)
fee for filing application, purpose, 70-806 (2)
findings and opinions of board, requirements, 70-810, 70-811—See hearing, below
minimal adverse effects on environment and citizens of state as purpose, 70-802
notice of application, requirements for service of, 70-806
time of filing, waiver by board, 70-806 (7)
definition of terms, 70-803
federally controlled facilities exempt, 70-804
financing of departmental activities, 70-805
grants, gifts and funds, receipt by department authorized, 70-822
hearing on certification proceedings, 70-807 to 70-813
amendment of certificate, hearing on application, 70-807 (2)
findings, opinion and decision of board, 70-810, 70-811
judicial review, 70-812, 70-813
parties to proceedings, waiver, 70-808
record of hearing required, 70-809
rules of evidence, 70-809
studies, investigations and reports as evidence, 70-809
long-range plan to be submitted to department annually by each utility, 70-814
contents of plan, 70-814
study and evaluation by department, factors considered, 70-815, 70-816
other laws superseded, 70-823
policy and legislative findings, 70-802
revocation or suspension of certificate, grounds, 70-818
study, evaluation and report of department on proposed facility, 70-807
title of law, 70-801
transfer of certificate, approval of department, restrictions, 70-804
"utility facility" defined, 70-803

PUBLIC UTILITIES (Continued)
Sites for utility facilities (Continued)
violations, 70-819 to 70-821
civil actions, rights of private persons, 70-819
monitoring of facilities, 70-820
penalties, procedure for collection, 70-821
Special privileges, franchises or immunities prohibited, 1972 Const., II, 31
Territorial integrity of electric suppliers, 70-501 to 70-508—See ELECTRIC SUPPLIERS, Territorial integrity
Tramway not a public utility, 69-6615
Unclaimed deposits and refunds, when presumed abandoned, 67-2204—See PROPERTY, Unclaimed property
Underground conversion of facilities
assessment of costs against benefited property, 70-605
actions contesting validity of assessments, 70-625
adoption of assessment ordinance, 70-618
costs covered by assessment, 70-605
governmental properties exempt from assessment, 70-605
hearing on proposed assessments, 70-617
installment payment of assessments specified by ordinance, 70-620
advance payment of installments, 70-623
delinquent installments, interest and penalties, 70-621
irregularities in procedure, effect on validity, 70-625
lien of assessments, 70-622
limitation of actions to contest validity of assessment, 70-625
notice of hearing on proposed assessments, 70-616
payment of assessment, when due, 70-619
proposed assessment list and ordinance, preparation, 70-614, 70-615
bonds, issuance and terms, 70-624
actions contesting legality of bonds, 70-625
citation of act, 70-601
construction by utility of converted facilities, 70-627
commencement of construction not required until legal steps taken, 70-635
notice to landowners of completion and availability of services, 70-628
reinstallation of overhead facilities prohibited, 70-632
costs of underground conversion
computation of costs payable to utilities, 70-626
feasibility report and cost estimate by public utility, 70-607
resolution requesting report, 70-606
payment of public utility for costs, 70-631
unconstitutionality of payment provisions, effect, 70-634
verified statement by utility after completion of conversion, 70-628
definition of terms, 70-603
legislative findings, 70-602
limitation of actions to contest validity of proceedings, 70-625
maintenance and repair of converted facilities, 70-627
private property, conversion of facilities on, 70-629
cost statement furnished by utility, 70-629
default by landowner, conversion by utility, 70-630
notice to landowner to remove overhead facility, 70-628
reinstallation of overhead facilities prohibited, 70-632
protest against proposed conversion, filing, 70-611
abandonment of project required by protest, 70-612
actions to contest validity of project, 70-625
waiver of objections by failure to protest, 70-613
public service commission jurisdiction unimpaired, 70-633
purpose of act, 70-602
severability of provisions, 70-634
special improvement district, creation authorized, 70-604
abandonment of district after hearing, 70-612
area included in district, 70-604
hearing on creation of district, 70-612

PUBLIC UTILITIES (Continued)
Underground conversion of facilities (Continued)
special improvement district (Continued)
notice of resolution and hearing, contents, 70-609
publication of notice, 70-610
ordinance creating district, 70-612
protest against creation of district, filing, 70-611
abandonment of project required by protests, 70-612
waiver of objections by failure to protest, 70-613
resolution for cost and feasibility study, 70-606
resolution of intention to create district, 70-608
title to converted facilities, 70-627
Underground facilities protected from excavations, 32-4801 to 32-4808—See STREETS, Underground facility

PUBLIC WELFARE
Aid to dependent children
amounts received by recipients as enrolled member of Indian tribe, effect, 71-509
changes in amount of assistance, 71-509
county residence, criteria for determination, 71-504
guardianship, creating, when, 71-509
unemployed father, when not disqualified, 71-501
federal funding, effect on qualification, 71-508.1
Aid to needy blind
amounts received by recipients as enrolled member of Indian tribe, effect, 71-607
application, 71-607
county of residence, criteria for determination, 71-604
treatment expenses payable, 71-610
Civil actions, poor person may sue or defend without costs, 93-8625
Claims of board against estate of deceased recipient, 71-247
Constitutional requirement for provision of economic assistance and social and rehabilitative services, 1972 Const., XII, 3
County board of public welfare
reimbursement for staff personnel expenses, 71-217
staff personnel, appointment and dismissal, 71-217
supervision by department of social and rehabilitation services, 82A-1904
County poor fund tax levy, budgeting and use, 71-222
Day care facilities, licensing and regulation, 10-801 to 10-811—See DAY CARE FACILITIES
Department of revenue authorized to investigate receipt and disbursement of welfare funds, 71-233.1
civil or criminal actions authorized, 71-233.1
confidentiality of information obtained, 71-233.4
co-operation of governmental agencies required, 71-233.2
information in welfare files to be made available to department, 71-233.3
"public welfare" and "welfare" defined, 71-233.5
Dependent child aid, students eligible for, 71-501
Developmentally disabled persons, protective services for, 71-1901 to 71-1913
application for protective services, contents, 71-1903
appropriated funds as source of payment for services, 71-1909
community homes for training and treatment authorized, 71-2001 to 71-2007
"community home" defined, 71-2002
departmental contracts with nonprofit corporations or associations authorized, 71-2004
establishment of homes by department, 71-2003
federal aid or other assistance, department authorized to apply for and receive, 71-2006
governmental units providing funds, materials, facilities and services, 71-2004
licensing of homes, rules and regulations to be adopted, 71-2007
limitation upon number of residents, 71-2002
local control of homes, 71-2005
nonprofit corporations or associations authorized to establish home, 71-2003

PUBLIC WELFARE (Continued)
Developmentally disabled persons, protective services for (Continued)
community homes for training and treatment (Continued)
programs by nonprofit corporations or associations authorized, 71-2005
purpose of law, 71-2001
rules, regulations and standards to be adopted by director, 71-2005
definition of terms, 71-1901
department as guardian or trustee, 71-1903
bond not required of department, exception, 71-1908
conservator of estate of ward, 71-1906
continuation or termination, hearing, 71-1911
disabilities, imposition upon ward authorized, 71-1904 (4)
manner of providing protective services, 71-1907
petition in district court, contents, hearing, order, 71-1904
protective and supportive services provided by department, 71-1905
"developmentally disabled person" defined, 71-1901
eligibility, determination and notice by department, 71-1903
estate of ward, payment for services by, limitations, procedure, 71-1909
gifts, grants and legacies, acceptance by department, 71-1913
judicial records required, 71-1912
legislative findings and declaration of policy, 71-1902
persons who may apply for protective services, 71-1903
reports required of field staff and director, 71-1910
rules and regulations to be adopted by director, 71-1902
sources of funds for payment for protective services, 71-1909
state-wide system of protective service to be developed, scope, 71-1902
Economic opportunity and poverty relief
city-county commissions, creation authorized, 71-1604
federal agencies, agreements with authorized, 71-1602
public funds, expenditure authorized, 71-1603
purpose of act, 71-1601
Funds available for welfare, receipt and crediting, 71-901
General relief
eligibility requirements, 71-302.1
payment of relief, means used, 71-307
work required of persons on relief, 71-307
workmen's compensation coverage, 92-411
Liens against property and estate of recipient released, 71-246.1
Medical assistance
administration and supervision by state and county departments, 71-1511
advisory council abolished, 82A-1908
amount, scope and duration of assistance, 71-1517
application for assistance to county department, form, 71-1518
confidential nature of records, 71-1523
contracting with other agencies to process claims and provide services, 71-1515
council to advise state department, composition, 71-1513
county reimbursement of state payments, 71-1519
change of residence, effect on county's obligation, 71-1522
discrimination prohibited, 71-1526
eligibility for aid, 71-1516
change of residence, effect on eligibility, 71-1522
determination of eligibility by county department, 71-1520
redetermination of eligibility, 71-1521
freedom of medical practice and selection of doctor, 71-1514
investigation of applications by county department, 71-1520
lien on property not to be required of recipient, 71-1524
recovery of payments from estate of deceased recipient, 71-1524
relative's responsibility, 71-1525
services included, 71-1512
state institution inmates, sources of payments for, 71-1517
Old-age assistance
county of residence, method of determination, 71-402
medical aid disqualifying for old-age assistance, 71-402

PUBLIC WELFARE (Continued)
Old-age assistance (Continued)
vendor medical payments
county reimbursement, 71-405
investigation of applications, 71-406
Permanently and totally disabled persons, criteria for determining county of residence, 71-1202
Persons receiving benefits under public welfare not entitled to compensation under occupational disease act, 92-1332
Poverty relief, 71-1601 to 71-1604—See Economic opportunity and poverty relief, above
Retarded child unable to benefit from special education program, report to and aid by local welfare department, 75-7812
Silicosis payments
state institution inmate, benefits payable to beneficiary, 71-1003
transfer of records and payrolls to industrial accident board, 71-1009
State administrator's position abolished and functions transferred, 82A-1902
State board of public welfare abolished and functions transferred, 82A-1902
quasi-judicial functions, 82A-1907
State department of social and rehabilitation services created, 82A-1901
board of social and rehabilitation appeals created, 82A-1906
functions of board, 82A-1907
board of veterans' affairs, composition and functions, 82A-1905
county departments of public welfare, supervision, 82A-1904
functions of department, 82A-1902, 82A-1903
head of department, 82A-1901
State hospital, maintenance of indigent persons discharged from, 38-110
State institution inmates, counties not required to reimburse for aid to, 71-211

PULMONARY DISEASE HOSPITAL
See GALEN STATE HOSPITAL, 80-1701 to 80-1704

Q

QUARANTINE
State quarantine in case of communicable disease, 69-4112
emergency action by executive officer, 69-4113
Venereal disease cases, isolation, 69-4605

QUIETING TITLE
Summons in action, statement to be added, M. R. Civ. P., Rule 4 C(2)

QUO WARRANTO
Supreme court proceedings, M. R. App. Civ. P.—See SUPREME COURT, Original proceedings in supreme court

R

RACING ASSOCIATIONS
Horse racing, 62-501 to 62-514—See HORSE RACING

RADAR
Radar arrest cases, 32-2150.1 to 32-2150.3

RADIATION CONTROL
Advisory committee, appointment and functions, 69-5805
abolition of committee, 82A-609
Control agency, powers and duties, 69-5804
Co-operative agreements with federal government and other agencies, 69-5810
Definition of terms, 69-5803

References are to Title and Section numbers

RADIATION CONTROL (Continued)
Emergency actions by board of health, 69-5812
Exemptions from statutory regulation, 69-5815
Exposure records required for persons exposed to radiation, 69-5808
Federal responsibility for radiation sources, assumption by state, 69-5809
Hearings required in regulatory proceedings, 69-5812
Impounding of radiation sources possessed by unauthorized persons, 69-5814
Inspections to determine compliance with act and rules, 69-5807
  agreements with other agencies for co-operative inspections, 69-5810
Licensing of persons handling radioactive materials and equipment, 69-5806
Local regulations not superseded by act, 69-5811
Medical use of radiation not restricted, 69-5808
Penalty for violations, 69-5816
Policy of state, 69-5801
Procedural requirements for regulatory acts, 69-5812
Prohibited uses of radiation sources, 69-5813
Purpose of regulation, 69-5802
Records required of persons possessing sources of ionizing radiation, 69-5808
Registration of persons handling radioactive materials and equipment, 69-5806
Training programs to qualify personnel, 69-5810

RADIO
Defamatory statements, notice to broadcaster and opportunity to correct, 64-207.1
Freedom of speech, expression, and the press, 1972 Const., II, 7
Protection of sources of information, 93-701-4
Publication of notice supplemented by broadcast, 19-201
  copy of transcript to be retained by broadcasting station, 19-202
  proof of publication, 19-203

RAILROADS
Annual report to summarize safety measures, 72-143
Board of railroad commissioners
  abolition of board and transfer of functions, 82A-1703
  motor carrier rate regulation, 8-103, 8-104.1 to 8-104.6—See MOTOR CARRIERS
  rules for protection of health and safety of railroad employees, 72-150
Bonds of railroad companies, issuance and terms, 72-224
Borrowing power of railroad companies, 72-211
Equipment trusts excluded from Uniform Commercial Code, 87A-9-104
Financing statements of railroad, contents and place of filing, 87A-9-302.2
  definition of terms, 87A-9-302.1
  Uniform Commercial Code, application, 87A-9-302.3
Flood control projects, contracts for use of railroad property for, 89-3310
Railroad commissioner, salary, 25-501
Rate changes by railroad or board action, 72-118
Securities, when exempt from securities act, 15-2013
Station closure, protection of employees, 72-169

REAL ESTATE BROKERS
Action by broker for commission, licensing to be alleged and proved, 66-1941
Bond required, contents and filing, 66-1933
Citation of act, 66-1924
Commission renamed as board and transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  appointment and terms of commission members, 66-1927
  attorney general to act for commission, 66-1944
  compensation of commission members, 66-1927
  continuation in office of board members, 82A-1606
  educational activities authorized, 66-1943
  employment of personnel for board, 82A-1604
  legal assistance in hearings by board, 82A-1604
  moneys received by commission, disposition, 66-1927
  records of commission proceedings, 66-1927
  retention of functions by board, 82A-1605
  rules and regulations of commission, 66-1927

References are to Title and Section numbers

REAL ESTATE BROKERS (Continued)
Definition of terms, 66-1925
Directory of licensees, publication by commission, 66-1945
Educational activities of commission, 66-1943
Employment of salesman by broker, license provisions, 66-1935
Exemptions from act, 66-1926
Fees payable to commission, 66-1934
annual fees, when payable, 66-1934
deposit in treasury and apportionment of fees, 66-1927
expenses of commission, payment from fund, 66-1927
schedule of fees prepared by commission, 66-1934
Fixed office required of broker, 66-1935
Fraudulent practices act, licensing law supplemental to, 66-1946
Liability for damages from failure to comply with act, 66-1940
Licenses
annual fees, cancellation for failure to pay, 66-1934
bond required for license, 66-1933
commission of broker or salesman, proof of licensing required in action to collect, 66-1941
corporations, licenses required, 66-1942
display of license by broker required, 66-1932
employment change by salesman, new license required, 66-1935
examination of applicants for license, 66-1930
fees payable for licenses, 66-1934
form prescribed by commission, 66-1932
issuance of license, regulation by commission, 66-1931
nonresident brokers, reciprocal licensing and privileges, 66-1936
penalty for acting without license, 66-1940
pocket card, issuance by commission, 66-1932
previously licensed brokers and salesmen, licensing without examination, 66-1930
qualification of licensees, 66-1929
required for conduct of business, 66-1924
revocation or suspension of license, power of commission, 66-1931
appeal to courts, 66-1939
effective date of decision of commission, 66-1939
grounds for revocation or suspension, 66-1937
salesman's license kept by broker, 66-1932
Nonresident brokers, licensing and conduct of business by, 66-1936
Penalties for violations of act, 66-1940
Place of business of broker to be designated in license, 66-1935
Service of process on nonresident brokers, 66-1936
Short title of act, 66-1924

RECALL
City officer under mayor-council form of government, 11-721.1

RECEIVERS
Appointment for consumer loan licensees, 47-227
Bulk Transfer chapter inapplicable to sales by receivers, 87A-6-103
Corporations, liquidation of
business corporations, 15-2291, 15-2292
nonprofit corporations, 15-2355, 15-2356
Real estate brokers' act, exemptions from, 66-1926
Statutes and rules governing receivers, M. R. Civ. P., Rule 66
Voting of corporate shares standing in name of receiver, 15-2231

RECIPROCAL ENFORCEMENT OF SUPPORT
See SUPPORT, Reciprocal enforcement, 93-2601-41 to 93-2601-82

RECOGNIZANCE
Preliminary examination of criminal defendant, recognizance by witness after examination, 95-1204
Release of person in custody on own recognizance, 95-1106

RECORDING
Abstracts entitled to recordation, 16-2902, 73-101.1
effect of recording, 73-201.1
After-acquired interests, recording as constructive notice of prior conveyance, 73-201
Method of recordation of certain instruments, when proper, 16-2903
Microfilm, 16-2903
Photostatic or other mechanical processes
admissibility into evidence, 16-2430
authorized in counties, 16-2428
enlargement, 16-2430
reproduction as public record, 16-2429
storage of copy, 16-2431
substitution of reproduction for original, 16-2429

RECORDS
Photostatic or mechanical processes in counties—See RECORDING
State board of review, 79-2405, 79-2406

RECREATION
Constitutional provision for preservation and administration of recreational areas, 1972 Const., IX, 4
Elderly persons, local tax levy to promote activities of, 71-1701
Landowner's restricted liability to gratuitous licensee for recreation, 67-808
definition of recreational purposes, 67-809
Outdoor recreational resources, development, 62-401 to 62-403—See OUTDOOR RECREATIONAL RESOURCES

REFEREES
See MASTERS, M. R. Civ. P., Rule 53

REFRIGERATED LOCKERS
See FOOD AND DRUGS, Food service establishments, 27-611 to 27-625

REFUSE DISPOSAL AREAS
Definition of terms, 69-4002
Disposal in unlicensed area prohibited, 69-4003
Highway protection laws unimpaired, 69-4010
Landowner's rights preserved, 69-4008
Legislative findings, 69-4001
License required for operation of disposal area, 69-4004
application for license, 69-4004
expiration and renewal of licenses, 69-4005
fee for license, disposition, 69-4004
inspection and approval by health officials, 69-4005
public agencies exempt from license requirement, 69-4008
revocation of or refusal to renew license, 69-4006
Penalty for violations, 69-4009
Policy of state, 69-4001
Publicly operated disposal areas, application of requirements to, 69-4008
Repeal of conflicting acts, 69-4010
Rules and regulations, publication and enforcement, 69-4007
Water supply protection laws unaffected, 69-4010

REFUSE DISPOSAL DISTRICTS
Board of directors, 69-6009, 69-6010
Boundary changes, 69-6011
County attorney as legal adviser to district, 69-6013
Creation of district, 69-6003 to 69-6006
Definitions, 69-6002
Fees and assessments, 69-6007
Installment payments for land and equipment, 69-6008
Joint districts, organization, 69-6012
Purpose, 69-6001

References are to Title and Section numbers

RELEASE
Affirmative defense, M. R. Civ. P., Rule 8(c)

RELIGION
Appropriation for religious purposes prohibited, 1972 Const., V, 11
Discrimination on account of religious ideas prohibited, 1972 Const., II, 4
Establishment of religion, laws respecting prohibited, 1972 Const., II, 5
Free exercise of religion guaranteed, 1972 Const., II, 5
Property tax exemption, 1972 Const., VIII, 5
Schools
  aid to sectarian schools by state prohibited, exception, 1972 Const., X, 6
  appropriation for private educational purposes prohibited, 1972 Const., V, 11
  instruction in sectarian doctrine prohibited, 75-7521
  nondiscrimination in education, 1972 Const., X, 7

RELIGIOUS CORPORATION SOLE ACT
Annual report required, 15-2409
Application of act, 15-2402
Articles of incorporation
  amendment of articles, 15-2410
  filing with secretary of state, 15-2404
  form and contents, 15-2404
  verification by incorporation, 15-2404
Board of advisors or consultors, number, qualifications, powers, 15-2408
Certificate of incorporation, issuance by secretary of state, effect of, 15-2405
Creation of corporation sole, when lawful, 15-2403
Incorporator, 15-2403
Invalidity of part of act, effect of, 15-2413
Powers of corporation sole, 15-2406
  succession on death or resignation from office, 15-2407
Repeal of prior acts, effect of, 15-2412
Short title, 15-2401
Succession, when effected, 15-2407
  interim powers of board of advisors or consultors, 15-2408
Unauthorized assumption of corporate powers, liability for debts and liabilities incurred, 15-2411

RELOCATION ASSISTANCE
Advisory services to be provided by agency, functions, duties, 93-9932
Appeal to district court from administrative determination, 93-9936
Application of law, programs and projects covered, 93-9927, 93-9944
Appraisal, negotiation and condemnation policies to be followed by agency, 93-9937
Definition of terms, 93-9928
Eminent domain, new value not created by law, 93-9943
  new or additional powers not created, 93-9943 (3)
Legislative purpose, 93-9927
Payments neither income nor resources under public assistance or state tax laws, 93-9935
Project costs to include relocation costs, 93-9934
Relocation payments, 93-9929 to 93-9931
  buildings and improvements removable by tenant, payment of tenant for, 93-9941
  condemnation proceedings abandoned, reimbursement of owner's expense, 93-9939, 93-9940
  definition of terms, 93-9928
  duplication of eminent domain payments not intended, 93-9942
  moving expense, alternative plans, 93-9929
  occupants of dwellings, payments to, 93-9929, 93-9931
  owners of dwellings, payments to, 93-9929, 93-9930
  penalty costs for prepayment of mortgage or deed of trust, reimbursement for, 93-9938
  place of business or farm operation, payment based on average annual net earnings, 93-9929

RELOCATION ASSISTANCE (Continued)
Relocation payments (Continued)
real property taxes, reimbursement for pro rata portion, 93-9938
recording fees, transfer taxes and similar expense, reimbursement and owner for, 93-9938
Replacement dwellings, assurance of availability required, 93-9933, 93-9934
new rights or liabilities not created, 93-9943

REORGANIZATION OF STATE GOVERNMENT
Advisory councils, creation, organization and functions, 82A-110
Allocation of agency to department for administrative purposes only, 82A-108
Appointment of department heads, 1972 Const., VI, 8; 82A-106
Board of state canvassers transferred to office of secretary of state, 82A-2102
Bondholders' rights protected, 82A-120
Citation of act, 82A-101
Constitutional authority, 1889 Const., VII, 21; 1972 Const., VI, 7
Constitutional offices preserved, 82A-104
Creation of new agencies prohibited, 82A-111
Definition of terms, 82A-103
Department of administration created, 82A-201
abolished agencies, functions transferred to department, 82A-202
advisory bodies abolished, 82A-213
board of administration continued in department, functions, 82A-210
transfer of functions to board, 82A-211
board of examiners continued in department, functions, 82A-207
board of investments created, organization, 82A-204
transfer of functions to board, 82A-205
board of state prison commissioners continued in department, 82A-208
depository board continued in department, 82A-209
merit system council created, organization and functions, 82A-206
state treasurer's office transferred to department for administrative purposes, exceptions, 82A-214
teachers' retirement board continued in department, functions, 82A-212
transfer of functions to department, 82A-202, 82A-203
Department of agriculture created, commissioner, 1972 Const., XII, 1; 82A-301
abolished agencies, functions transferred to department, 82A-302
advisory bodies abolished, 82A-305
board of hail insurance transferred to department for administrative purposes, 82A-304.1
transfer of functions to department, 82A-302, 82A-303
wheat research and marketing committee continued in department, 82A-304
Department of business regulation created under state examiner, 82A-401
abolished agencies, functions transferred to department, 82A-402
board of food distributors renamed and continued in department, 82A-404
board of trade abolished, functions transferred to department, 82A-404
milk control board renamed and transferred to department, 82A-406
transfer of functions to department, 82A-402, 82A-403
Department of education created under board of education, 82A-501
advisory bodies abolished, 82A-510
arts council continued in department, 82A-508
board of education functions continued, exceptions, 82A-506
co-operative extension service, functions transferred to, 82A-502
historical society transferred to department, 82A-503
board continued in advisory capacity, 82A-507
director's position continued in department, 82A-504
transfer of functions to director, 82A-505
library commission continued in department, 82A-509
Department of fish and game created under commission, 82A-2001
aerial tramway safety board, department substituted for, 82A-2005
commission, composition, quasi-judicial functions, 82A-2004
director, appointment, qualifications, term, removal, functions, 82A-2003
functions of department, 82A-2001.1

REORGANIZATION OF STATE GOVERNMENT (Continued)
Department of fish and game (Continued)
outfitters' council, composition, qualifications and terms of members, allocation to the department, 82A-2005
passenger tramway safety board, department substituted for, 82A-2005
Department of health and environmental sciences created, 82A-601
abolished agencies, functions transferred, 82A-602
advisory bodies abolished, 82A-609
air pollution control advisory council continued in advisory capacity, 82A-606
board of health renamed and continued as quasi-judicial board, 82A-605
director, qualifications, appointment and functions, 82A-608
division of environmental sciences, creation and functions, 82A-604
sanitarian advisory council abolished, 82A-610
transfer of functions to department, 82A-602, 82A-603
water pollution control council renamed and continued in advisory capacity, 82A-607
Department of highways created, 82A-701
abolished agencies, functions transferred to department, 82A-702
board of highway appeals created as quasi-judicial board, 82A-704
functions transferred to board, 82A-705
councils and committees abolished, 82A-708
director of highways, appointment and functions, 82A-707
highway commission continued as quasi-judicial board, 82A-706
transfer of functions to department, 82A-702, 82A-703
Department of institutions created, 82A-801
abolished department, functions transferred, 82A-802
advisory bodies and committees abolished, 82A-807
board of eugenics continued in department, 82A-805
board of institutions continued in advisory and quasi-judicial capacity, 82A-806
transfer of other functions to department, 82A-803
board of pardons continued in department, 82A-804
Department of intergovernmental relations created, 82A-901
abolished agencies, functions transferred to department, 82A-902
aeronautics commission renamed and continued in department, 82A-905
county printing commission renamed and continued in department, 82A-904
highway traffic safety task force abolished, 82A-906
transfer of functions to department, 82A-902
Department of justice created under attorney general, 82A-1201
abolished agencies, functions transferred, 82A-1202
crime control commission renamed and continued in department, organization and functions, 82A-1207
division of motor vehicles created, 82A-1204
functions transferred to division, 82A-1205
highway patrol functions, transfer to division, 82A-1206
fire prevention advisory commission abolished, 82A-1208
name of department changed, 82A-1209
transfer of functions to department, 82A-1202, 82A-1203
Department of labor and industry created under commissioner, 1972 Const., XII, 2; 82A-1001
abolished agencies, functions transferred to department, 82A-1002
board of labor appeals created, organization, 82A-1008
functions transferred to board, 82A-1009
board of personnel appeals created within department, composition, functions, 82A-1014
division of employment security created in department, 82A-1006
bureaus within division, 82A-1006
commission abolished and functions transferred, 82A-1007
division of workmen's compensation created in department, 82A-1004
functions transferred to division, 82A-1005
occupational health advisory committee abolished, 82A-1011
study commission and board abolished, 82A-1010
transfer of functions to department, 82A-1002, 82A-1003
Department of law enforcement and public safety, 82A-1201 to 82A-1209—See Department of justice, above

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT (Continued)
Department of livestock created, 82A-1301
advisory committee on predatory animal control abolished, 82A-1305
commission renamed and continued as head of department, functions, 82A-1303
sanitary board abolished and functions transferred, 82A-1304
transfer of functions to department, 82A-1302
Department of military affairs created under adjutant general, 82A-1401
abolished agencies, functions transferred, 82A-1402
advisory council and committees abolished, 82A-1404
transfer of functions to department, 82A-1402, 82A-1403
Department of natural resources and conservation created, 82A-1501
abolished agencies, functions transferred, 82A-1502, 82A-1505
advisory committees and council abolished, 82A-1511
board of natural resources and conservation created as quasi-judicial board, 82A-1509
conservation commission abolished, 82A-1507.1
director as head of department, appointment and functions, 82A-1510
divisions of department enumerated, 82A-1504
abolished agencies, functions transferred to divisions, 82A-1505
transfer of functions to division, 82A-1505, 82A-1506
mined land reclamation advisory committee abolished, 82A-1512
oil and gas conservation commission renamed and continued in department, 82A-1508
transfer of functions to department, 82A-1502, 82A-1503
Department of professional and occupational licensing created, 82A-1601
director of department, duties, 82A-1604
examining boards transferred to department, 82A-1602
functions of examining boards, 82A-1605
membership of examining boards, 82A-1606
functions of department in support of examining boards, 82A-1603
Department of public service regulation created, 82A-1701
board of railroad commissioners abolished and functions transferred, 82A-1703
commission continued, organization and functions, 82A-1702
Department of revenue created, 82A-1801
director as head of department, 82A-1801
creation of office, appointment, duties, 82A-1804
liquor control board abolished, functions transferred to department, 82A-1807
appeal of beer or liquor license decisions to state tax appeal board, 82A-1808
multi-state tax compact advisory committee abolished, 82A-1806
advisory council appointed, 82A-1803
transfer of functions to department, 82A-1802
Department of social and rehabilitation services created, 82A-1901
abolished agencies, functions transferred, 82A-1902
advisory councils and committees abolished, 82A-1908
board of social and rehabilitation appeals created, organization, 82A-1906
functions transferred to board, 82A-1907
county departments and boards continued under supervision of department, 82A-1904
transfer of functions to department, 82A-1902, 82A-1903
veterans' welfare commission renamed and continued in department, 82A-1905
Department of state lands created under board, 82A-1101
board created, 1972 Const., X, 4
commissioner's position created, functions, 82A-1104
functions of department, 82A-1101.1
Directors, appointment by governor, 1972 Const., VI, 8; 82A-106
access to records before assuming office, 82A-109
powers and duties of directors, 82A-107
Enumeration of departments, 82A-104
number of principal departments, 1972 Const., VI, 7
Federal aid requirements, adjustments for, 82A-122
Federal-state co-ordinator's office transferred to governor's office, 82A-2101
Governor's powers over department, 1972 Const., VI, 8; 82A-105

References are to Title and Section numbers

REORGANIZATION OF STATE GOVERNMENT (Continued)
Heads of departments, appointment, 1972 Const., VI, 8; 82A-106
access to records before assuming office, 82A-109
removal from office as provided by law, 1972 Const., V, 13
reports to governor, 1972 Const., VI, 15
Obligations of agencies remain unaffected by transfer of functions, 82A-120
Officers and employees transferred, rights unaffected, 82A-116
Pending proceedings unaffected by transfer of functions, 82A-119
Policy and purposes of reorganization, 82A-102
Powers and duties of department heads, 82A-107
Property of agencies transferred with functions, 82A-117
Quasi-judicial boards, organization and membership, 82A-112
Rules and regulations remain in effect after transfer of functions, 82A-118
Statutory and documentary references to agencies, application, 82A-121
Terminology used in internal structure of departments, 82A-104
Temporary commissions, 1972., VI, 7
Unassigned agencies or functions, assignment by governor, 82A-115

REPORTS
Annual report to governor
adjutant general, 77-120
arts council, 82-3606
board of architectural examiners, 66-109
board of barber examiners, 66-408
board of chiropractic examiners, 66-513
board of dental examiners, 66-904
board of examiners in optometry, 66-1311
board of osteopathic examiners, 66-1410
board of pardons, 94-9824, redes. 95-3206
board of pharmacy, 66-1504
board of registration for professional engineers and land surveyors, 66-2334
board of trustees of state law library, 44-403
board of veterinary medical examiners, 66-2203
commissioner of agriculture, 3-106, 3-122
commission on uniform state laws, 12-404
director of division of vocational rehabilitation, 41-803
employment security commission, 87-120
grass conservation commission, 46-2306
horse racing commission, 62-504
industrial accident board, 92-118
liquor control board, 4-227
oil and gas conservation commission, 60-127
public service commission, 70-111
state administrator, 71-209
state aeronautics commission, 1-202
state athletic commission, 82-302
state board of arbitration and conciliation, 41-906
state board of hail insurance, 82-1519
state board of health, 69-4106
state board of institutions, 80-1405
state examiner, 82-1002
state forester, 81-1411
state highway commission, 32-2409
superintendent of banks, 5-902
wheat research and marketing reports, 3-2914
Contents of reports, 82-4002
Definition of terms, 82-4001
Frequency and periods covered by reports, 82-4002
Governor's authority to require information from branches and departments of government, 1972 Const., VI, 15
Publication and distribution of reports, 82-4002

RESCUES AND ESCAPES
Escape from prison, venue of prosecution, 95-409
Interstate detainer, escape from custody on, penalty, 94-1101-4, redes. 95-3134

RESCUES AND ESCAPES (Continued)
Juvenile facilities of department of institutions, apprehension and return of absentee, 80-2211
penalty for aiding escape, 80-2212

RES JUDICATA
Affirmative defense, M. R. Civ. P., Rule 8(c)

RESTAURANTS
Licensing and regulation, 27-611 to 27-625—See FOOD AND DRUGS, Food service establishments
Wages of employees of lessees, protection, 41-2001 to 41-2011—See WAGES, Restaurant, Bar and Tavern Wage Protection Act

RESTRAINT OF TRADE
Bids for contracts, unlawful agreements for refunds or returns, penalty, 94-1104, redes. 51-401
Dairy products, application of provisions to, 3-24-130
Sale of commodities, penalty for unfair discrimination in, 51-409
School books, actions against dealer restricting competition, 75-7609
Unfair discrimination in purchase price of commodities, penalty for violation, 51-405

RETIREMENT
See PUBLIC EMPLOYEES' RETIREMENT ACT
Game wardens, 68-1401 to 68-1429—See FISH AND GAME, Wardens for enforcement of laws, retirement system
Judges, 93-1107 to 93-1132—See JUDGES, Retirement system

RETIREMENT HOMES
Lodging establishment regulations, 34-301 to 34-310—See HOTELS AND MOTELS

RIOTS
Governor's authority to call militia forces, 1972 Const., VI, 13
Importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33

ROADBLOCKS
Arrests at, requirements, 95-618

RODENTICIDES
See PESTICIDES, 27-213 to 27-245

ROOMING HOUSES
Lodging establishment regulations, 34-301 to 34-310—See HOTELS AND MOTELS

RUBBISH
See LITTER CONTROL LAW, 94-3335 et seq.; REFUSE DISPOSAL AREAS, 69-4001 et seq.; REFUSE DISPOSAL DISTRICTS, 69-6001 et seq.

RULES OF APPELLATE CIVIL PROCEDURE
See Title 93, Chapter 3001

RULES OF CIVIL PROCEDURE
See Title 93, Chapter 2701

RULES OF CRIMINAL PROCEDURE
See 95-103 to 95-108

RURAL ELECTRIC AND TELEPHONE CO-OPERATIVES
Area served by co-operative, 14-530
newly served areas, 70-501 to 70-508—See ELECTRIC SUPPLIERS, Territorial integrity

RURAL ELECTRIC AND TELEPHONE CO-OPERATIVES (Continued)
Underground facilities, conversion to, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion

RURAL IMPROVEMENT DISTRICTS
See COUNTIES, Rural improvement districts

S

SALARIES
Adjutant general, 77-117, 77-120
Assignment of claims against state, 83-901 to 83-904
Central payroll system
death of employee, reissuance of warrant in name of designated person, 25-507.7
duplicate payroll warrants, 25-507.6
exceptions from, 25-507.1
lost or destroyed payroll warrants, 25-507.6
pay rate, determination of weekly or hourly, 25-507.9
payroll periods, 25-507.2
notice prior to change of period, 25-507.3
payroll roster, 25-507.4, 25-507.5
service charges, 25-507.10
state agencies, applicable to, 25-507.1
state auditor to install and operate, 25-507.1
state payroll revolving account, 25-507.8
uniform pay dates, 25-507.2
Commissioner of labor and industry, 41-1603
Commission to recommend compensation for judiciary and elective state officers, 1972 Const., XIII, 3; 59-1401 to 59-1404—See MONTANA SALARY COMMISSION
County officers, 25-605
fixing of salaries to be in accordance with schedule, 25-609.1
District court judges, 1972 Const., VII, 7; 93-303
Elected state officials, 1972 Const., VI, 5, VII, 7; 25-501
salary in full for all services, exceptions, 25-501.1
Highway patrolmen, 31-105
Industrial accident board appointed member, 92-104
Justices of the peace, 1972 Const., VII, 5
Legislators, 1972 Const., V, 5
Lieutenant governor, 25-501
Schedules maintained by controller, 82-109.4
State board of equalization members, 84-702
State examiner, 82-1011
State forester, 81-1403
Supreme court justices, 1972 Const., VII, 7

SALES
Acceleration of performance, good faith required in exercising option, 87A-1-208
Acceptance of goods
acts constituting acceptance, 87A-2-606
approval sales, effect, 87A-2-327
damages for nonacceptance by buyer, measure, 87A-2-708
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
failure to reject as acceptance, 87A-2-606
inspection rights of buyer, 87A-2-513
nonconforming goods, buyer's right to accept or reject, 87A-2-601
effect of acceptance on remedies, 87A-2-607
recovery of damages by buyer, 87A-2-714
ownership rights, exercise as acceptance, 87A-2-606
partial acceptance of commercial unit, effect, 87A-2-606
payment before inspection not acceptance, 87A-2-512
payment required for goods accepted, 87A-2-607
revocation of acceptance, 87A-2-608
tender of delivery as condition to seller's right to acceptance, 87A-2-507

References are to Title and Section numbers

SALES (Continued)
Acceptance of offer, means permitted, 87A-2-206
additional terms proposed in acceptance, effect, 87A-2-207
auction sales, 87A-2-328
Anticipatory repudiation, 87A-2-610
retraction of repudiation, 87A-2-611
Approval sales, 87A-2-326, 87A-2-327
Assignment of rights under contract, effect on parties, 87A-2-210
Assortment of goods to be selected by buyer, 87A-2-311
Assurance of performance, rights of parties to demand, 87A-2-609
Auction sales, special provisions applicable, 87A-2-328
Authenticity of third-party documents presumed, 87A-1-202
Blood transfusion as service and not sale, 69-2203
Breach of contract
remedies of seller, 87A-2-703
risk of loss, effect of breach on, 87A-2-510
Bulk sales, 87A-6-101 to 87A-6-111—See BULK TRANSFERS
Casualty to identified goods, effect on rights of parties, 87A-2-613
C.&F. terms, effect on obligations, 87A-2-320, 87A-2-321
C.I.F. terms, effect on obligations, 87A-2-320, 87A-2-321
Citation of Uniform Commercial Code chapter, 87A-2-101
Conditional sales, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
definition of term, 19-103
Consignment sales, 87A-2-326, 87A-2-327
Consumer sales statute unimpaired by Uniform Commercial Code, 87A-2-102
Course of dealing between parties, application, 87A-1-205
Course of performance, effect on contract, 87A-2-208
Creditors' rights against sold goods
agreements as to applicable state law, restrictions, 87A-1-105
approval sales, claims of buyer's creditors against, 87A-2-326
buyer's interest taking priority, 87A-2-402
fraudulent sales, avoidance, 87A-2-402
return sales, claims of buyer's creditors against, 87A-2-326
voidable preference, sale constituting, 87A-2-402
Damages for breach
agreements limiting or altering measure of damages, 87A-2-719
buyer's damages for nondelivery or repudiation, measure, 87A-2-713
incidental expenses of seller, items recoverable, 87A-2-710
liquidated damages, 87A-2-718
market price, determination, 87A-2-723
published quotations, use in evidence, 87A-2-724
penal damages prohibited, 87A-2-718
Definition of terms, 87A-2-103
"agreement," 87A-2-106
"between merchants," 87A-2-104
"cancellation," 87A-2-106
"commercial unit," 87A-2-105
"conforming," 87A-2-106
"contract," 87A-2-106
"financing agency," 87A-2-104
"future" goods, 87A-2-105
general definitions in Commercial Code, 87A-1-201
"goods," 87A-2-105
index of definitions, 87A-2-103
"lot," 87A-2-105
"merchant," 87A-2-104
"present sale," 87A-2-106
"sale," 87A-2-106
"termination," 87A-2-106
Delegation of performance, effect on rights of parties, 87A-2-210
Delivery of goods
C.&F. terms, construction, 87A-2-320
C.I.F. terms, construction, 87A-2-320

References are to Title and Section numbers

SALES (Continued)
Delivery of goods (Continued)
cure by seller of improper tender or delivery, 87A-2-508
damages for nondelivery, measure, 87A-2-713
delay excused by failure of presupposed conditions, 87A-2-615
buyer's remedy on claim of excuse, 87A-2-616
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
excuse by failure of presupposed conditions, 87A-2-615
buyer's remedy on claim of excuse, 87A-2-616
ex-ship delivery terms, effect on obligation, 87A-2-322
F.A.S. terms, construction, 87A-2-319
F.O.B. terms, construction, 87A-2-319
no arrival, no sale term, effect on obligation, 87A-2-324
nonconforming goods, buyer's right to accept or reject, 87A-2-601
place of delivery in absence of agreement, 87A-2-308
remedies of buyer for nondelivery, 87A-2-711
shipment by seller as delivery, acts constituting, 87A-2-504
reservation of interest by seller shipping goods, 87A-2-505
shipment means to be selected by seller, 87A-2-311
single lot delivery presumed, 87A-2-307
stoppage in transit on breach or insolvency of buyer, 87A-2-705
indemnification of carrier for loss or expenses, 87A-7-504
substituted performance, when permitted, 87A-2-614
tender of delivery, requirements and acts constituting, 87A-2-503
time for delivery in absence of agreement, 87A-2-309
title passing on delivery in absence of agreement, 87A-2-401
Uniform Commercial Code, applicability, 74-325
Documents of title
adequacy of document governed by chapter on sales, 87A-7-509
customary banking channels used for delivery, 87A-2-308
defects apparent on face of document, payment as waiver of objection, 87A-2-605
draft against documents, acceptance for payment requiring delivery of documents, 87A-2-514
financing agency, rights acquired in documents, 87A-2-506
inspection of goods covered by document, 87A-2-513
overseas shipment, form of bill of lading required, 87A-2-323
shipping documents, tender required for delivery of goods, 87A-2-504
reservation of security interest by seller, 87A-2-505
stoppage in transit by seller
indemnification of carrier for losses and expenses, 87A-7-504
presentation of documents required, 87A-2-705
tender of document as tender of delivery, 87A-2-503
Duration of contract providing for successive performances, 87A-2-309
Exclusive dealing contracts, obligations imposed on parties, 87A-2-306
Excuse of performance by failure of presupposed conditions, 87A-2-615
buyer's remedies on claim of excuse, 87A-2-616
Ex-ship delivery terms, effect, 87A-2-322
Farmer sales statutes unimpaired by Uniform Commercial Code, 87A-2-102
F.A.S. terms, construction, 87A-2-319
Fiduciaries, validation of sales, 91-4324 et seq.
Financing agency purchasing draft, rights acquired, 87A-2-506
Firm offer to buy or sell, effect, 87A-2-205
F.O.B. terms, construction, 87A-2-319
Formal requisites for contract of sale, 87A-2-204
Fraud, remedies available, 87A-2-721
Fungible goods
undivided share in identified bulk, sale permitted, 87A-2-105
warehouse receipt claim subordinate to buyer from warehouseman, 87A-7-205
Good faith required, 87A-1-203
Identification of goods, time of occurrence, 87A-2-501
Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
Infringement actions against buyer, rights of seller to defend, 87A-2-607
Insecurity of contract, rights of parties to demand assurance, 87A-2-609

SALES (Continued)
Insolvency of buyer, remedies available to seller, 87A-2-702
Insolvency of seller, buyer's right to goods, 87A-2-502
Inspection rights of buyer of goods, 87A-2-513
evidence of conformity or nonconformity, rights of parties to preserve, 87A-2-515
Installment contracts, effect of breach, 87A-2-612
Insurable interest of buyer and seller in goods, 87A-2-501
Judicial sales validated despite defects, 93-5846
Letter of credit, failure of buyer to furnish, 87A-2-325
Limitation of actions arising out of contract, 87A-2-725
Liquidated damage clauses, 87A-2-718
Market price, determination, 87A-2-723
published quotations, use in evidence, 87A-2-724
Merchantable goods, definition, 87A-2-314
Modification of contract, means permitted, 87A-2-209
No arrival, no sale term, effect on obligations, 87A-2-324
Obligations of parties in general, 87A-2-301
Open terms in contract, effect, 87A-2-204
price left open, 87A-2-305
Optional means of performance not invalidating contract, 87A-2-311
Oral evidence to vary written agreement, 87A-2-202
Output of seller, contracts measuring quantity by, 87A-2-306
Overseas shipments, form of bill of lading required, 87A-2-323
Parol evidence to vary written agreement, 87A-2-202
Part interest in identified goods, sale permitted, 87A-2-105
Payment for goods
acceptance creating duty to pay, 87A-2-607
apportionment where delivery is in lots, 87A-2-307
C.&.F. terms, construction, 87A-2-320, 87A-2-321
check payment conditional on honor, 87A-2-511
C.I.F. terms, construction, 87A-2-320, 87A-2-321
F.A.S. terms, effect on obligation, 87A-2-319
F.O.B. terms, effect on obligation, 87A-2-319
forms of payment permissible, 87A-2-304
inspection by buyer before payment, 87A-2-310
letter of credit, delivery suspending obligation to pay, 87A-2-325
nonconformity of goods, effect where contract requires payment before inspection, 87A-2-512
open price terms in contract, 87A-2-305
property to be used in payment, 87A-2-304
substituted means of payment, when permitted, 87A-2-614
tender of delivery as condition to right to payment, 87A-2-507
tender of payment, forms permitted, 87A-2-511
time for payment or running of credit, 87A-2-310
Penalty clauses unenforceable, 87A-2-718
Realty, contract requiring severance of goods from, 87A-2-107
Rejection of goods
acceptance of nonconforming goods precluding rejection, 87A-2-607
installment contracts, effect of rejection of installment, 87A-2-612
instructions from seller as to disposition of goods, 87A-2-603
nonconforming goods, buyer's right to accept or reject, 87A-2-601
notice of rejection to seller, 87A-2-602
obligations of buyer with respect to rejected goods, 87A-2-602
merchant buyer's duties, 87A-2-603
return of goods to seller, 87A-2-604
sale of rejected goods by buyer, 87A-2-603, 87A-2-604
salvage of rejected goods by buyer, 87A-2-604
security interests of buyer in rejected goods, 87A-2-711
storage of rejected goods for seller's account, 87A-2-604
time allowed for rejection, 87A-2-602
waiver of objections by failure to particularize, 87A-2-605
Remedies of buyer, 87A-2-711
agreements limiting or excluding remedies, 87A-2-719
ancillary obligations, remedies unimpaired by Commercial Code chapter, 87A-2-701

References are to Title and Section numbers

SALES (Continued)
Remedies of buyer (Continued)
anticipatory repudiation, 87A-2-610
cancellation of contract, remedies preserved, 87A-2-720
collateral obligations, remedies for unimpaired by Commercial Code chapter, 87A-2-701
consequential damages recoverable from seller, 87A-2-715
covering purchases of substitute goods, 87A-2-712
damages for nondelivery or repudiation by seller, measure, 87A-2-713
deduction of damages from contract price, 87A-2-717
fraud of seller, remedies available, 87A-2-721
incidental damages recoverable from seller, 87A-2-715
limitation of actions, 87A-2-725
liquidated damages, 87A-2-718
nonconforming goods, recovery after acceptance, 87A-2-714
recovery of identified goods, 87A-2-716
rescission of contract, remedies preserved, 87A-2-720
security interests in rejected goods, 87A-2-711
specific performance, when authorized, 87A-2-716
third parties, actions against for injury to goods, 87A-2-722
warranty, damages for breach, 87A-2-714
Remedies of seller, 87A-2-703
agent standing in position of seller, 87A-2-707
agreements limiting or excluding remedies, 87A-2-719
ancillary obligations, remedies unimpaired by commercial code chapter, 87A-2-701
anticipatory repudiation, 87A-2-610
cancellation of contract, remedies preserved, 87A-2-720
collateral obligations, remedies unimpaired by commercial code chapter, 87A-2-701
completion of unfinished goods, 87A-2-704
damages for nonacceptance or repudiation, measure, 87A-2-708
fraud of buyer, remedies available, 87A-2-721
identification of goods to contract after breach, 87A-2-704
incidental damages, items included, 87A-2-710
insolvency of buyer, remedies available on discovery, 87A-2-702
limitation of actions, 87A-2-725
liquidated damages, 87A-2-718
price of goods, recovery from buyer, 87A-2-709
resale of goods and recovery of difference from buyer, 87A-2-706
rescission of contract, remedies preserved, 87A-2-720
salvage of unfinished goods, 87A-2-704
secured creditor standing in position of seller, 87A-2-707
stoppage of delivery in transit, 87A-2-705
indemnification of carrier for expenses or loss, 87A-7-504
third parties, actions against for injury to goods, 87A-2-722
Repudiation of contract
anticipatory repudiation, 87A-2-610
retraction of repudiation, 87A-2-611
damages for repudiation by buyer, measure, 87A-2-708
damages for repudiation by seller, measure, 87A-2-713
remedies of buyer, 87A-2-711
remedies of seller, 87A-2-703
Requirements of buyer, contract measuring quantity by, 87A-2-306
Rescission of contract, means permitted, 87A-2-209
Reservation of rights by party while performing or accepting performance, 87A-1-207
Retail installment sales act, 74-601 to 74-612—See INSTALLMENT SALES ACT
Return of goods, contract permitting, 87A-2-326, 87A-2-327
Risk of loss
agreements shifting or dividing risk, 87A-2-303
approval sales, effect, 87A-2-327
breach of contract, effect on risk, 87A-2-510
C.&F. terms, effect, 87A-2-320, 87A-2-321
C.I.F. terms, effect, 87A-2-320, 87A-2-321
ex-ship delivery terms, effect, 87A-2-322
F.A.S. terms, effect, 87A-2-319

SALES (Continued)
Risk of loss (Continued)
F.O.B. terms, effect, 87A-2-319
no arrival, no sale term, effect, 87A-2-324
passage of risk, principles for determining time, 87A-2-509
return sales, effect, 87A-2-327
Scope of Uniform Commercial Code chapter, 87A-2-102
Seals on writings inoperative, 87A-2-203
Security interest retained by seller, law governing interest, 87A-9-113, 87A-9-206
Security transactions exempt from Uniform Commercial Code chapter, 87A-2-102
Severance of goods from realty, sale contract required, 87A-2-107
Short title of Uniform Commercial Code chapter, 87A-2-101
Statute of frauds
goods, contracts for sale of, 87A-2-201
property other than goods and securities, 87A-1-206
Statute of limitations in contracts for sale, 87A-2-725
Statutes unimpaired by Uniform Commercial Code chapter, 87A-2-102
Substituted performance, when permitted, 87A-2-614
Termination of contract
indefinite duration contracts, 87A-2-309
notice of termination by party, 87A-2-309
Time allowed for required actions, 87A-1-204
Transfer of title
approval sales, effect, 87A-2-327
delivery constituting transfer in absence of agreement, 87A-2-401
entrusting of goods to merchant, merchant's power to transfer title, 87A-2-403
identification of goods required for passage, 87A-2-401
rejection or refusal by buyer, revesting of title, 87A-2-401
reservation of title by seller after delivery limited to security interest, 87A-2-401
voidable title giving power to transfer good title, 87A-2-403
Unconscionable provisions, effect on contract, 87A-2-302
Undivided share of fungible goods, sale permitted, 87A-2-105
Usage of trade, application, 87A-1-205
Waiver of executory portion of contract, effect, 87A-2-209
Warranties
action against buyer for breach of warranty, duty to notify seller, 87A-2-607
affirmation creating express warranty, 87A-2-313
conflicting warranties, resolving, 87A-2-317
consequential damages recoverable for breach, 87A-2-715
course of dealing creating implied warranty, 87A-2-314
cumulation of warranties where reasonable, 87A-2-317
damages for breach of warranty, measure, 87A-2-714
description creating express warranty of conformity, 87A-2-313
encumbrance, warranty against, 87A-2-312
exclusion of warranties by agreement, 87A-2-316
express warranties, means of creation, 87A-2-313
fitness for particular purpose warranted where buyer relies on seller's judgment, 87A-2-315
implied warranties, 87A-2-314, 87A-2-315
infringement, warranty against, 87A-2-312
merchantability warranted by implication, 87A-2-314
modification of warranties by agreement, 87A-2-316
promise creating express warranty, 87A-2-313
remedies for breach of warranty, limitation by agreement, 87A-2-316
sample creating express warranty of conformity, 87A-2-313
third-party beneficiaries of warranties, 87A-2-318
title to goods, 87A-2-312
Uniform Commercial Code, applicability, 74-325
usage of trade creating implied warranty, 87A-2-314

SANITARIANS
Administration of chapter by department of health, 69-3402

SANITARIANS (Continued)
Advisory council, appointment and functions, 69-3402
council abolished, 82A-602, 82A-610
Appeal procedure, 69-3408
Definitions, 69-3401
Penalty for violation of act, 69-3406
Register of applications for registration, 69-3402
Registration
application fee, 69-3404
applications for, 69-3403
issuance of certificate, 69-3403
operating as without being registered prohibited, penalty, 69-3406
reciprocity registration, 69-3407
renewal fee, 69-3404
revocation or suspension, grounds and procedure, 69-3405
term of certificate, 69-3403
Service of process on board, 69-3409

SANITARY LICENSEES
Application for license, contents, 69-5402
Denial, suspension or revocation of license, 69-5401
Enforcement of license requirements, 69-5408
Expiration of licenses, 69-5403
Fee for license, 69-5403
Issuance and numbering of licenses, 69-5403
License required for business of cleaning cesspools, septic tanks or privies, 69-5401
Penalty for violations, 69-5408
Public agencies exempt from license requirement, 69-5407
Rules adopted by state board, 69-5406
Validation signature affixed to license by local health officer or sanitarian, 69-5405
Vehicles of licensees, marking, 69-5404

SAVINGS AND LOAN ASSOCIATIONS
Accounts excluded from chapter on secured transactions, 87A-9-104
Dissolution of association, when distribution presumed abandoned, 67-2206—See also PROPERTY, Unclaimed property
Real estate loans permitted, 7-113.1
Retail installment sales act
compliance with provisions of act other than licensing required, 74-603
licensing under not required, 74-603
Unclaimed deposits, when presumed abandoned, 67-2202—See PROPERTY, Unclaimed property

SCHOOL DISTRICTS AND TRUSTEES
Abandonment of districts
bonded indebtedness remains charge against original territory, 75-6529
cash and debts, disposition, 75-6532
elementary district abandoned, notice and attachment to another district, 75-6512
joint elementary district, 75-6513
high school district abandoned, attachment to another district, 75-6524
property of district, title vested in district to which attached, 75-6536
records surrendered to trustees of new district or county superintendent, 75-6537
tax valuation basis for district to which attached, 75-6530
trustees of district to which attached remain in office, 75-6531
Adult education fund, establishment and tax levy for, 75-7207
Annexation of districts
bonded indebtedness as charge against original territory, 75-6529
cash and debts, disposition, 75-6532
elementary districts, when annexation permitted, 75-6507
election on annexation with assumption of bonded indebtedness, 75-6509
election on annexation without assumption of bonded indebtedness, 75-6510
procedure for annexation, 75-6508
high school districts
approval by superintendent of public instruction required, 75-6528

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Annexation of districts (Continued)
high school districts (Continued)
hearing and order by high school boundary commission, 75-6521
joint district, when establishment authorized, 75-6525
procedure for establishment of district, 75-6526
protest and counter-proposition by electors of elementary district, 75-6523
resolution of trustees sent to county superintendent, 75-6519
property of annexed district, title vesting in annexing district, 75-6536
records of annexed district, surrender to trustees of annexing district, 75-6537
tax valuation basis for annexing district, 75-6530
trustees of annexing district continue in office, 75-6531
voluntary incentive plan
additional bonus payments for additional districts included, 75-6547
amount of bonuses offered, 75-6541
application for bonus payments, contents, 75-6543
approval or disapproval of bonuses by superintendent of public instruction, 75-6544
definition of terms, 75-6541
disbursement and deposit of bonus payments, 75-6545
eligibility for bonus payments, 75-6542
purpose of plan, 75-6540
reduction in territory, disqualification of district by, 75-6546
Appeals to county superintendent from trustees, 75-5811
Appointment of trustees in high school district operating county high school, 75-5921
vacancy in office, filling, 75-5922
Bond issues of district
amortization bonds preferred over serial bonds, 75-7106, 75-7121
definition of terms, 75-7105
backdating of bond issues, 75-7108
conflict of laws, resolving, 75-7101
dating of bond issues, 75-7108
debt service fund
budgeting for debt service fund, 75-7127
investment of moneys in debt service fund, 75-7130
payments from debt service fund, 75-7129
redemption of bonds from debt service fund, 75-7130
refunding bond issue reduced by use of debt service fund, 75-7104
revenues credited to debt service fund, 75-7129
surplus in fund, disposition, 75-7132
tax levy for debt service fund, 75-7128
districts to which provisions apply, 75-7102
election required for bond issue, 75-7110
ballots for bond elections, 75-7115
canvass of votes in bond election, 75-7117
notice of bond election, 75-7116
number of affirmative votes required to approve bonds, 75-7117
petition proposing election, contents, 75-7112
submission and certification of petition, 75-7113
trustees' action on petition, 75-7114
refunding bonds, election not required, 75-7109
resolution for election, 75-7110
terms of bonds set forth in resolution, 75-7111
execution of bonds, 75-7122
form of bonds, 75-7122
interest rate on bonds, 75-7107, 79-2602
definition of terms, 79-2601
laws applicable to bond issues, 75-7101
legal assistance in bond proceedings, 75-7125
liability of district on bonds, 75-7126
limitation on indebtedness, 1889 Const., XIII, 6
maturity dates of bonds, 75-7107
maximum bond issue based on tax valuation, 75-7104

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Bond issues of district (Continued)
payment and cancellation of bonds and coupons, 75-7131
printing of bonds, 75-7122
purposes for which bonds authorized, 75-7103
redemption of bonds from debt service fund, 75-7130
bonds to include provisions for redemption, 75-7107
refunding bonds authorized without election, 75-7109
debt service fund applied to reduce refunding bond issue, 75-7104
registration of bonds, 75-7123
resolution for bond issue, terms of bonds set forth, 75-7118
sale of bonds
bids, acceptance by trustees, 75-7121
credit of proceeds to school district funds, 75-7124
delivery of bonds to purchaser, 75-7124
fees and commissions for assisting in sale prohibited, 75-7121
investment of proceeds of sale, 75-7124
notice of sale, contents, 75-7119
publication of notice, 75-7120
price at which bonds sold, 75-7121
proceeds of sale, failure to pay into treasury as felony, 75-7124
rejection of bids and private sale, 75-7121
Boundaries of districts
correction and adjustment of descriptions by superintendent, 75-6504
records of boundaries maintained by county commissioners, 75-6504
time of year when boundary changes prohibited, 75-6505
Budget system
adult education fund, 75-7207
building reserve fund, 75-7206
county board of school budget supervisors, 75-6703
debt service fund, budgeting for, 75-7127
department of revenue statement of property valuations furnished to county superintendent, 75-6711
districts to which requirements apply, 75-6701
emergency budget authorized, 75-6724
circumstances justifying emergency budget, 75-6723
filing and delivery of adopted budget, 75-6728
final emergency budget adoption by county board, 75-6727
hearing on emergency budget, 75-6727
maximum amount of emergency budget, 75-6727
petition for approval of emergency budget by superintendent of public instruction, 75-6725
resolution for emergency budget, contents and adoption, 75-6725
publication and posting of resolution, 75-6726
state aid to emergency budget, 75-6729
tax levy for emergency budgets, 75-6730
time of adoption, 75-6724
transportation contract, emergency budget for, 75-6727
treasurer's report on emergency budget, 75-6730
estimates of interest and income moneys for budgeting purposes, 75-6911
estimates of state equalization aid for budgeting purposes, 75-6920
federal funds, allocation to budget items, 75-6718
final budget, adoption by county board, 75-6713
adjustments and corrections by budget board, 75-6714
adoption of final budget, 75-6716
estimates of revenue furnished by county superintendent, 75-6712
filing and distribution of copies of final budget, 75-6719
hearing of district trustees on corrections and adjustments, 75-6714
notice of final budget meeting, 75-6709
reduction of general fund budget exceeding lawful maximum, 75-6715
forms prescribed and distributed by superintendent of public instruction, 75-6704
initial budget items and estimates, entry by county superintendent, 75-6705

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Budget system (Continued)
joint district budgeting procedures,
county officials performing budgeting functions for district, 75-6720
preliminary budgets and estimates, preparation, 75-6721
tax levies for joint districts, 75-6722
maximum general fund budget without a voted levy, 75-6905
nonoperating fund budget, 75-7210
post-secondary vocational-technical center fund, 75-7208, 75-7708
preliminary budget, preparation and adoption by trustees, 75-6707
availability of preliminary budget for inspection by taxpayers, 75-6709
county superintendent to prepare budget on failure by trustees, 75-6708
notice of preliminary budget meeting, 75-6706
regulations established by superintendent of public instruction, 75-6702
retirement fund, 75-7204
separate budget for each district, 75-6701
supervision by superintendent of public instruction, 75-6702
tax levy by county commissioners based on final budget, 75-6717
transportation budget, 75-7020
treasurer's statement of cash balances and bond information furnished to county superintendent, 75-6710
tuition fund for elementary pupils, 75-7203
Building fund, establishment and administration, 75-7213
Building reserve fund, authorization and purpose, 75-7205
budgeting and tax levy for fund, 75-7206
Chairman of trustees, duties, 75-5927
Child care institution district boundaries changed by acquisition of land, 75-6515
Classes of districts, 75-6503
Clerk of district, appointment, 75-5927
powers and duties, 75-5935
Collective action required, 75-5901
Community college districts, 75-8101 to 75-8133—See COLLEGES AND UNIVERSITIES, Community colleges
Consolidation of districts
bonded indebtedness as charge against original territory, 75-6529
cash and debts, disposition, 75-6533
elementary districts, procedure for consolidation, 75-6506
election on consolidation with assumption of bonded indebtedness, 75-6509
election on consolidation without assumption of bonded indebtedness, 75-6510
joint district in two or more counties formed by consolidation, 75-6511
high school districts
approval by superintendent of public instruction required, 75-6528
county commissioners ordering consolidation of districts, 75-6527
hearing and order by high school boundary commission, 75-6521
joint district, when establishment permitted, 75-6525
procedure for establishment, 75-6526
protest and counter-proposition by electors of elementary dsitrict, 75-6523
resolution of trustees sent to county superintendent, 75-6519
property, vesting of title in consolidated district, 75-6536
records of old districts surrendered to trustees of consolidated district, 75-6537
tax valuation basis for consolidated district, 75-6530
voluntary incentive plan
additional payments on addition of other districts, 75-6547
amount of bonuses offered, 75-6541
application for bonus payments, contents, 75-6543
approval or disapproval of application by superintendent of public instruction, 75-6544
definition of terms, 75-6541
disbursement and deposit of bonus payments, 75-6545
eligibility for bonuses, 75-6542
purpose of plan, 75-6540
reduction in territory, district disqualified by, 75-6546
Constitutional provision for supervision and control of schools in districts, 1972 Const., X, 8

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Contracts of district
advertising and award to lowest responsible bidder, 75-6808
preference to Montana bidders, 82-1924
definition of residence, 82-1925
federal aid projects exempt, 82-1926
materials and labor from state, preference to, 82-1926
Corporate powers of district, 75-6501
County superintendent, consultation with trustees, 75-5808
meetings called by superintendent, 75-5807
Definition of terms used throughout title, 75-5901
Definition of types of districts, 75-6501
Dissolution of joint elementary district, procedure for, 75-6514
bonded indebtedness remains charge against original territory, 75-6529
cash and debts, disposition, 75-6532
property of district, vesting of title in district to which attached, 75-6536
records surrendered to trustees of new district or county superintendent, 75-6537
tax valuation basis for district to which attached, 75-6530
trustees of district to which attached remain in office, 75-6531
Division of county into high school districts
approval by superintendent of public instruction required, 75-6528
elementary district divided, approval by electors required, 75-6522
hearing and order by high school boundary commission, 75-6521
request by trustees of district, 75-6520
Election of trustees, 1972 Const., X, 8
annual election, 75-5912
ballot form, 75-5915
conduct of election, 75-5915
high school district operating county high school, conversion to elective system for trustees, 75-5923
composition of board after election, 75-5924
nominations for office, 75-5913
petition of electors, time of submission, contents, election, 75-5914.1
Elections on school matters
absentee voting, 75-6416
superintendent of public instruction to prepare forms, 23-3702, 75-5707
annual election days, 75-6404
ballot required in all elections, 75-6403
format of ballot, establishment by trustees, 75-6408
bond elections, 75-7110 to 75-7117—See Bond issues, above
canvass of votes by trustees, 75-6423
certificate of election, issuance, 75-6423
challenge of electors, 75-6412
clerks of election, designation, 75-6419
conduct of election, 75-6421, 75-6422
conflicting provisions in general election law, 75-6402
counting of ballots, 75-6422
date of annual elections, 75-6404
elections to which provisions apply, 75-6401
electronic voting systems, use in school elections, 75-6417
expenses of election, sources of payment, 75-6420
hours of polling, 75-6405
morning hours established by trustees, 75-6408
judges of election, appointment and notice, 75-6408
compensation of judges, 75-6420
replacement of absent judge, 75-6419
list of registered electors prepared for polling places, 75-6414
delivery of and charges for lists, 75-6415
signature of list by electors voting, 75-6422
notice of election, posting, publication and contents, 75-6409
opening and closing of polls, 75-6405
morning hours established by trustees, 75-6408
order for election, time limitation for election, 75-6407
resolution adopted by trustees, 75-6406

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Elections on school matters (Continued)
pollbook kept by election clerk, 75-6422
polling places for elections, 75-6408
publication of election results, 75-6423
qualifications of electors, 75-6410
registration of voters, closing, 75-6413
registration of voters, resident district to be shown, 23-3004.1
resolution of election, contents, when adopted and transmittal, 75-6406
return of records and supplies to district trustees, 75-6422
special elections, when called, 75-6404
supervision of elections by trustees, 75-6418
supplies provided to polling places, 75-6418
voting machines, use in school elections, 75-6417
Eligibility for office of trustee, 75-5913
Employment and dismissal of personnel, 75-5934
Endowment fund, investment and administration, 75-7309
Equalization aid, 75-6901 to 75-6927—See SCHOOLS, Equalization aid
Existing districts continued, 75-6502
Federal programs fund, establishment and administration, 75-7212
Financial administration
annual financial report of county superintendent, 75-6804
appropriated amounts, fund opened by treasurer, 75-6809
depletion of account, notice by county treasurer, 75-6811
lapse of appropriations at end of year, 75-6813
transfers between appropriation items, 75-6812
warrants, charging against appropriations, 75-6811
auditing of district records, 75-6807
cash reserves at end of year for payment of general fund warrants, 75-6924
contracts and purchases, advertising and award to lowest responsible bidder, 75-6808
splitting of contracts to circumvent requirement prohibited, 75-6808.1
districts to which provisions apply, 75-6802
expenditures, documentation required, 75-6809.1
funds defined and classified, 75-6801
joint districts, county officers acting for, 75-6803
lapse of budgeted appropriations at end of year, 75-6813
moneys to which provisions apply, 75-6802
nonbudgeted funds, expenditures limited to cash balance, 75-6814
pecuniary interest of trustee prohibited, 75-6808
rules and regulations of superintendent, 75-6802
supervision by superintendent of public instruction, 75-6802
transfers between appropriation items, 75-6812
treasurer's duties as custodian of funds, 75-6805
appropriated amounts, entry in fund records, 75-6809
warrants, recording and payment, 75-6811
trustees' duties, 75-6806
warrants, issuance, 75-6810
warrants issued by trustees of district, 75-6810
cancellation for lapse of time, issuance of duplicate warrant, 75-6811.1
recording and payment by county treasurer, 75-6811
Fiscal year of schools, 75-7402
Food services fund, establishment and administration, 75-7211, 75-8005
Funds established by districts
adult education fund, 75-7207
building fund, 75-7213
building reserve fund, 75-7205, 75-7206
endowment fund, 75-7309
federal programs fund, 75-7212
food services fund, 75-7211, 75-8005
housing and dormitory fund, 75-7214
interlocal co-operative agreement fund, 75-7216
nonoperating fund, 75-7209, 75-7210
post-secondary vocational-technical center fund, 75-7208, 75-7708

References are to Title and Section numbers

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Funds established by districts (Continued)
retirement fund, 75-7204
traffic education fund, 75-7215, 75-7907
tuition fund for elementary pupils, 75-7203
Housing and dormitory fund, establishment and administration, 75-7214
Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Interlocal co-operative agreement fund, establishment and administration, 75-7216
Investment of surplus funds, 16-2050
Joint board of trustees, formation and organization, 75-5928
powers of joint board, 75-5929
Judgment against district, liability for, 75-5940
Legal assistance by county attorney, 75-8305
Liability insurance covering district and employees, 75-5939
Meetings of trustees, 75-5930
Names and numbers of districts, 75-6501
New districts, creation
bonded indebtedness remains charge against original territory, 75-6529
cash and debts, disposition, 75-6534
elementary district, conditions required for creation, 75-6517
procedure for creation of elementary district, 75-6518
high school district
approval by superintendent of public instruction required, 75-6528
elementary district divided, approval by electors required, 75-6522
hearing and order by high school boundary commission, 75-6521
protest and counter-proposition by electors of elementary district, 75-6523
resolution of trustees sent to county superintendent, 75-6519
property of district, title vested in new district, 75-6536
records surrendered to trustees of new district, 75-6537
tax valuation basis of new district, 75-6530
Nonoperating fund, purpose and establishment, 75-7209
budgeting and tax levy for fund, 75-7210
Number of trustee positions in district, 75-5902
additional positions in high school districts, 75-5903
districts for nomination of additional trustees, 75-5904
election of additional trustees, 75-5904
redetermination of additional trustee positions, 75-5905
change in classification of district, 75-6503
high school district operating county high schools, 75-5920
Oath of office, 75-5916
time of taking oath, 75-8304
vacancy, person appointed to fill, 75-5918
Organization meeting of trustees, 75-5927
Pecuniary interest of trustees in contracts prohibited, 75-6808
Penalty for violations not otherwise covered, 75-8307
Personal liability of trustees, 75-5941
Physician or nurse, retention by trustees, 75-5934
Post-secondary vocational-technical center fund, establishment and budgeting for, 75-7208, 75-7708
Powers and duties of trustees in general, 1972 Const., X, 8; 75-5932, 75-5933
Property of district, trustees' power over, 75-8201
delivery to successor trustee or officer, 75-5926
insurance on property carried by trustees, 75-8212
sale of abandoned, obsolete or undesirable property by trustees, 75-8205
tax exemption, 1972 Const., VIII, 5
Public works projects, splitting of contract to avoid competitive bidding prohibited, 75-6808.1
Purchases by district
advertising and award to lowest responsible bidder, 75-6808
preference to Montana bidders, 82-1924
contract provision for preference in materials and labor, 82-1926
definition of residence, 82-1925
federal aid projects exempt, 82-1926

SCHOOL DISTRICTS AND TRUSTEES (Continued)
Quorum of trustees, 75-5930
Record of actions of trustees, 75-5932
Redivision of county into high school districts
approval by superintendent of public instruction required, 75-6528
elementary district divided, approval by electors required, 75-6522
hearing and order by high school boundary commission, 75-6521
resolution of trustees sent to county superintendent, 75-6519
Removal of trustee from office, 75-5919
Reports to county superintendent and state officials, 75-5934
Sale of goods or services to school district as misdemeanor, penalty, 75-8303
Service of process on school districts, M. R. Civ. P., Rule 4D(2)
Severability of provisions, 75-8311
Terms of office of trustees, 75-5906
additional trustees, adjustment of terms for staggering, 75-5909
change of classification of district, adjustment of terms on, 75-5910
first trustees, determination of terms by lot, 75-5908
high school district operating county high school, 75-5925
staggered terms, 75-5907
vacancy, term for which filled, 75-5911
Traffic education fund, establishment and administration, 75-7215, 75-7907
Transfer of territory between districts
bonded indebtedness remains charge against original territory, 75-6529
cash and debts not transferred, 75-6535
elementary districts, transfer between, 75-6516
high school districts
approval by superintendent of public instruction required, 75-6528
elementary district divided, approval by electors required, 75-6522
hearing and order by high school boundary commission, 75-6521
joint district, when establishment authorized, 75-6525
procedure for establishment of districts, 75-6526
protest and counter-proposition by electors of elementary district, 75-6523
resolution of trustees sent to county superintendent, 75-6519
property located in transferred territory, vesting of title in new district, 75-6536
tax valuation basis of gaining and losing districts, 75-6530
trustees of districts continue in office, 75-6531
Travel reimbursement of trustees and secretary, 75-5931
educational conventions, 25-508
Types of districts enumerated and described, 75-6501
Unified county high school and elementary district, procedure for establishment, 75-6538
adjustments and transactions after approval of unification, 75-6539
Vacancy in office, circumstances creating, 75-5917
filling of position, 75-5918
Visitations to schools, 75-5934

SCHOOLS
Accreditation of schools, annual establishment and review, 75-7502
standards of accreditation, 75-7501
Adult education program, establishment by district authorized, 75-7513
curriculum taught, 75-7513
definition, 75-7512
fund established for program, 75-7515
policies adopted by trustees, 75-7514
tuition and fees charged, 75-7516
Ages when children admitted to school, 75-6302
compulsory attendance ages, 75-6303, 75-6304
Alcohol abuse education, 75-8901 to 75-8905—See Drug and alcohol abuse. below
Appeals in school matters
county superintendent, appeal to from trustees, 75-5811
state superintendent, appeals to, 75-5709
Appropriation for private educational purposes prohibited, 1972 Const., V, 11

SCHOOLS (Continued)
Attendance at schools
ages when children eligible for admittance, 75-6302
compulsory attendance, 75-6303 to 75-6309—See Compulsory attendance, below
Attendance outside district or county
elementary school pupils attending outside district
appeals from school officials' decisions, 75-6315
discretionary approval by school officials, when permitted, 75-6314
mandatory approval by school officials, circumstances requiring, 75-6313
mileage factors, computation, 75-6315
notice to parents of school officials' decision, 75-6315
parents assuming responsibility for tuition, 75-6320
report by host district at end of school term, 75-7202
residence of child, basis for determination, 75-6315
tuition rates, 75-7201
budgeting, tax levy and payment of tuition, 75-7203
exceptional child requiring special education, 75-7808
out-of-state attendance, 75-7809
state institution, no tuition required for child attending, 75-7810
high school student attending outside county of residence, 75-6316
children's center pupils attending school in Twin Bridges, state payment for, 75-6319
parents assuming responsibility for tuition, 75-6321
reporting, budgeting and payment of tuition, 75-6317
interstate agreements for payment of tuition, 75-6318
Board of public education
appointment of members, 1972 Const., X, 9; 75-5610 (1)
combined boards as state board, 1972 Const., X, 9; 75-5615
composition of board, 1972 Const., X, 9; 75-5610 (1)
creation of board, 1972 Const., X, 9; 75-5609 (1)
powers and duties, 1972 Const., X, 9; 75-5617 (1)
Bond issues for school purposes
county high school bonds, 75-7133 to 75-7138—See County bond issues, below
district bond issues, 75-7101 to 75-7132—See SCHOOL DISTRICTS AND TRUSTEES, Bond issues
Budget system, 75-6701 to 75-6730—See SCHOOL DISTRICTS AND TRUSTEES, Budget system
Buildings and sites
approval by electors required for purchase, building, exchange, acquisition or sale, 75-8204
construction plans, approval by board of health and fire marshal, 75-8206
contract payments prohibited until plans approved, 75-8208
review and approval by department of administration, 75-8206.1
contracts for construction or repair to be advertised and let to lowest bidder, 75-8210
election on purchase, building, exchange, acquisition or sale of sites and buildings, 75-8204
election on site selection, 75-8203
flag displayed at school buildings, 75-5934
health department to set standards and approve plans for construction, 69-4117
inspection and correction of conditions by boards of health, 69-4118
health requirements for sites and buildings, 75-8207
insurance on property, 75-8212
lease of buildings for school purposes, 75-8209
lease of school property for other purposes, 75-8211
lighting requirements for buildings, 75-8207
removal of buildings and improvements after abandonment for school purposes, 75-8202
repossession by original owner after abandonment for school purposes, 75-8202
sale or disposition of abandoned or unsuitable property, 75-8205
selection of site, criteria and approval by electors, 75-8203
space requirements for buildings, 75-8207
state land sold or leased for school purposes, 75-8203

References are to Title and Section numbers

SCHOOLS (Continued)
Buildings and sites (Continued)
trustees' responsibility for property, 75-8201
ventilation required in buildings, 75-8207
Buses, 75-7001 to 75-7024—See Transportation of pupils, below
Closing of schools, 75-6607
Compulsory attendance
ages when children compelled to attend, 75-6303
handicapped children excused from attendance, 75-6303
report of case to welfare agency, 75-6308
home study in lieu of attendance at school, 75-6303
Indian children, attendance under tribal agreements, 75-6309
indigent child not attending, report to welfare agencies, 75-6308
judge of district court excusing from attendance, 75-6303
officers to enforce attendance, appointment, 75-6305
powers and duties of attendance officers, 75-6306
proceedings to compel attendance, 75-6307
private schooling in lieu of attendance in district, 75-6303
prosecution of nonattendance cases, 75-6307
suspended or expelled child excused from attendance, 75-6304
temporary absence excused, 75-6304
Conservation instruction required, 75-7509
Control of pupils by school authorities, 75-6310
suspension or expulsion of pupil, 75-6311
Corporal punishment, administration by teacher, 75-6109
Correspondence study to meet special needs, 75-7510
County bond issues for high school purposes
apportionment of bond proceeds among high schools in county, 75-7136
budgeting prohibited for items covered by bond issue, 75-7138
election on bond issue, 75-7135
payment of bonds, 75-7137
petition for bond election, 75-7134
purposes for which bonds authorized, 75-7134
schools to which bond issues available, 75-7133
Curriculum
conservation education, 75-7509
drug and alcohol abuse education, 75-8901 to 75-8905—See Drug and alcohol abuse, below
elementary schools, subjects taught in, 75-7503
guide file, maintenance and availability to districts, 75-7505
high school, subjects taught in, 75-7504
Indian studies in certain federally assisted schools, 75-6130 to 75-6132—See INDIANS
junior high school, subjects taught in, 75-7504
Damage to school property by pupil, 75-6310
Day of instruction, number of hours required, 75-7403
definition of terms, 75-7401
Days of instruction included in school year, 75-7402
definition of terms, 75-7401
post-secondary vocation-technical centers, 75-7711
Definition of terms used throughout title, 75-6601
feminine included in masculine, 75-8301
"pupil," 75-6301
Disciplinary measures against pupils, 75-6310
suspension and expulsion, 75-6311
teacher's power, 75-6109
Discrimination prohibited, 1972 Const., X, 7
District superintendent, employment, 75-6112
duties of superintendent, 75-6113
Disturbance of school as misdemeanor, penalty, 75-8306
Driver education, 75-7901 to 75-7907—See Traffic education, below
Drug and alcohol abuse education required, 75-8904
consultation and advice by dependency commission, 75-8905
purpose of requirement, 75-8901
teacher preparation, 75-8902, 75-8903

SCHOOLS (Continued)

Elections in school matters, 75-6401 to 75-6423—See SCHOOL DISTRICTS AND TRUSTEES, Elections
"Elementary school" defined, 75-6601
Equality of opportunity guaranteed, 1972 Const., X, 1
Equalization aid to schools
  average number belonging, definition and calculation, 75-6902
    increase in average number belonging, circumstances permitting, 75-6903, 75-6904
  county equalization aid
    elementary school levy and revenues available, 75-6912
    fines paid into fund, 75-8302
    formulas for apportionment of moneys, 75-6915
    high school levy and revenues available, 75-6913
    quarterly apportionment to school districts, 75-6914
    transportation and tuition costs deducted before apportionment, 75-6914
  foundation program, amount, 75-6906
    maximum general fund without a voted levy, 75-6905
  interest and income moneys
    amounts subject to distribution, 75-6907
    definition of term, 75-6907
    deposit in equalization aid fund, 75-6908
  isolated schools, financing, 75-6906
  joint district foundation program, proration and calculation, 75-6927
  maximum general fund budget without a voted levy, 75-6905
  purpose of foundation program and general fund, 75-6901
  special education programs, computation of aid adjusted for, 75-7813
    preschool and adult education, aid to, 75-7816
  state equalization aid, 1972 Const., X, 1
    apportionment formula, 75-6919
    board of public education duties, 75-6917
    county tax levy to make up state deficiencies, 75-6921
    definition of term, 75-6916
    earmarked revenues available for aid, 75-6916
    estimates of state aid for budgeting purposes, 75-6920
    purpose of aid, 75-6917
    superintendent of public instruction duties, 75-6918
  state impact aid, 75-6925
  state land equalization payments, purposes for which used, 81-1121
    distribution within county, 81-1120
Expulsion of pupil from school, 75-6311
Extracurricular fund for pupil activities, establishment and accounting, 75-6323
Federal funds, acceptance and administration, 75-7303
Fees chargeable for use of equipment, 75-6322
Financial administration and funds, 75-6801 to 75-6814—See SCHOOL DISTRICTS AND TRUSTEES, Financial administration
Fines, reporting and payment into county equalization fund, 75-8302
Fire safety
  drills to be conducted regularly, 75-8308.1
    alarm to be sounded on fire alarm system, 75-8308.4
    number of drills required, 75-8308.2
    recall signal to be distinct, control of signal, 75-8308.6
    time of drills, 75-8308.3
  fire department to be called for actual fire, 75-8308.5
  inspection of exits by school authorities, 75-8308.7
Fiscal year of schools, 75-7402
Flag displayed at school building, 75-5934
Food services program
  commodities, acceptance from federal government and use, 75-8004
  definition of terms, 75-8001
  federal funds, acceptance and administration, 75-8002
  federal impact funds, use for indigent pupils, 75-8006
  fund, establishment and administration by district, 75-7211, 75-8005

SCHOOLS (Continued)
Food services program (Continued)
records and reports, audit, inspection and review, 75-8003
state institutional schools, application to, 75-8007
trustees' duties, 75-8005
Fraternities, when prohibited, 75-6312
Free public elementary and secondary schools, 1972 Const., X, 1
Gifts for school purposes, acceptance and administration, 75-7309
Goals of educational system, 1972 Const., X, 1
Governor as ex officio member of boards of education, 1972 Const., X, 9
reports to governor, 1972 Const., VI, 15
"High school" defined, 75-6601
High school principal, employment for county high school, 75-6112
duties of principal, 75-6113, 75-6114
Holidays and days of special observance, 75-7406, 75-7407
Hours of school in day, minimum required, 75-7403
definition of terms, 75-7401
Immunization against disease of newly enrolled children, powers of trustees, 75-5933
Indians, cultural integrity to be preserved, 1972 Const., X, 1
studies in certain federally assisted schools, 75-6130 to 75-6132—See INDIANS
In-service training and individual consultations with department, 75-7506
Interlocal co-operative agreements, laws governing, 75-7304
co-operating agency's duties, 75-7307
definition of terms, 75-7305
prime agency's functions, 75-7306
Interstate agreements for joint school facilities, 75-7308
Isolated school, approval and establishment, 75-6608
"Junior high school" defined, 75-6601
Kindergarten programs, establishment, 75-7507
Laboratory fees chargeable, 75-6322
Legislative duties in regard to educational goals, 1972 Const., X, 1
Library required in each school, 75-7517
policies adopted by trustees, 75-7518
public use of libraries, 75-7518
reports to state officials on library, 75-7520
sectarian publications prohibited, 75-7521
selection of books for library, 75-7519
standards required, 75-7517
Music instruction from private teachers, school credit for, 75-7508
Opening and reopening of schools
elementary school, 75-6602
high school, 75-6603
junior high school, 75-6604
joint board of trustees operating county high school, establishment by, 75-6605, 75-6606
Penalty for violations not otherwise covered, 75-8307
Physician or nurse retained by school district, 75-5934
Post-secondary vocational-technical centers
administration of centers by local board, 75-7710
application for designation, contents and presentation, 75-7707
budgeting and program categories, 75-7708
conflict of laws, resolving, 75-7710
days of school in year, 75-7711
definition of terms, 75-7701
designation by legislative direction, 75-7707
eligibility for admission as pupil, 75-7712
existing centers recognized, 75-7707
fees for use of equipment and material, 75-7714
financing of centers, 75-7709
residents of state given priority in admission, 75-7712
tuition not charged, 75-7713
state buildings and land, lease or transfer to district operating center, 75-7715
taxable property valuation required for designation, 75-7707

References are to Title and Section numbers

SCHOOLS (Continued)
Post-secondary vocational-technical centers (Continued)
tax levy for support of centers, 75-7709
tuition charges to nonresidents, 75-7713
Prayer in schools, 75-7521
Preschool programs, establishment, 75-7507
Principal of county high school, employment, 75-6112
duties of principal, 75-6113, 75-6114
Privileged communications between counselor, psychologist, nurse, or teacher and student, 93-701-4
Property of school, trustees' power over, 75-8201
tax exemption, 1972 Const., VIII, 5
Public school fund of state
apportionment of interest and income, 1972 Const., X, 5
guarantee by state, 1972 Const., X, 3
investment, 1972 Const., VIII, 13; 81-1001
sources, 1972 Const., X, 2; 75-7301
Records, destruction when old and worthless, 59-514
fiscal records, destruction after period of years, 59-516
Religion
aid to sectarian schools prohibited, exception, 1972 Const., X, 6
appropriation for private educational purposes prohibited, 1972 Const., V, 11
instruction prohibited, 75-7521
nondiscrimination in education, 1972 Const., X, 7
prayer in schools, 75-7521
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Safety patrols, organization and operation, 75-8310
drivers to honor stop signs and permit movement of children, 32-2177
Saturday instruction prohibited, exceptions, 75-7404
definition of terms, 75-7401
Secret organizations prohibited, 75-6312
Sectarian instruction prohibited, 75-7521
Sectarian schools
aid prohibited, exception, 1972 Const., X, 6
appropriation for private educational purposes prohibited, 1972 Const., V, 11
Severability of provisions, 75-8311
Special education for exceptional children
approval of program by superintendent of public instruction required, 75-7811
attendance of child outside district or county
out-of-state attendance, tuition arrangements, 75-7809
state institution providing training, no tuition paid, 75-7810
tuition paid to another district conducting program, 75-7808
co-operation by state agencies, 75-7804
definition of terms, 75-7801
equalization aid adjustments for programs, 75-7813
pre-school and adult programs, assistance for, 75-7816
exclusion of child from program, valid reasons for, 75-7812
multi-district programs, establishment on petition, 75-7807
number of children required to establish program
discretionary establishment, 75-7806
mandatory establishment, 75-7805
petition by parents for establishment of class, 75-7807
policies adopted by board of education, 75-7802
superintendent's duties in supervision and co-ordination, 75-7803
transportation to be provided for exceptional child, 75-7814
preschool and adult education, state transportation assistance for, 75-7816
state reimbursement for transportation, 75-7815
State board of education
composition of board, 1972 Const., X, 9; 75-5609 (3)
powers and duties, 1972 Const., X, 9; 75-5615, 75-5617 (3)
State school lands
apportionment of income to school districts, 1972 Const., X, 5

References are to Title and Section numbers

SCHOOLS (Continued)
State school lands (Continued)
board of land commissioners, 1972 Const., X, 4
disposition of public land trust, 1972 Const., X, 11
public school fund, proceeds from lands part of, 1972 Const., X, 2
Sunday, conduct of school on prohibited, 75-7404
definition of terms, 75-7401
Surplus property, 82-3101 to 82-3106—See STATE AGENCY FOR SURPLUS PROPERTY
Suspension of pupil from school, 75-6311
procedure for suspension, 75-6109
Tax levies for support of schools
additional levy approved by electors for special purposes, 75-6923
adult education fund levy, 75-7207
budget as basis for district levy, 75-6717
building reserve fund, levy for, 75-7206
computation of general fund net levy, 75-6926
county equalization levy for elementary schools, 75-6912
county equalization levy for high schools, 75-6913
debt service fund levy, 75-7128
nonoperating fund levy, 75-7210
permissive district levy to supplement foundation program, 75-6922
post-secondary vocational-technical center, levy for, 75-7709
retirement fund contributions, levy for, 75-7204
state aid deficiencies, levies to make up, 75-6921
transportation levies, 75-7021
tuition for elementary pupils, levy for, 75-7203
Teachers
abuse of pupils as misdemeanor, 75-6109
abuse of teachers as misdemeanor, 75-6110
annual reports on attendance by pupils, 75-6108
certification required to teach in public schools, 75-6001
alien teacher, provisional certification, 75-6005
appeal to board of education from denial, suspension or revocation of certificate, 75-6010
classes of certificates, 75-6006
duration of certificates, 75-6008
emergency authorization of employment of uncertified persons, 76-6011
exchange teacher, annual certification, 75-6005
fees for certificates, 75-6009
issuance of certificates by state superintendent, 75-6003
oath required of teachers, 75-6004
policies for certification adopted by state board, 75-6002
previously issued certificates continued in effect, 75-6007
qualifications for certification, 75-6004
registration of certificate with county superintendent, 75-6106
renewal of certificates, 75-6008
student teachers, certification not required, 75-6001
suspension and revocation of certificates, 75-6010
child abuse reports required, 10-901 to 10-905—See CHILDREN AND MINORS, Abuse of children
collective bargaining by teachers
definition of terms, 75-6117
discharge of teachers, employer's rights unimpaired, 75-6124
duration of agreements, 75-6119
duty of employers to negotiate, 75-6118, 75-6119
election of teachers' representatives, 75-6121
exclusive representation, 75-6118
employment of teachers, employer's right unimpaired, 75-6124
open negotiating sessions, 75-6127
panel to make recommendations when parties unable to agree, 75-6123
policy of state, 75-6116
previously existing agreements, continuation in effect, 75-6119, 75-6128
ratification of agreements, 75-6122

References are to Title and Section numbers

SCHOOLS (Continued)
Teachers (Continued)
collective bargaining by teachers (Continued)
representatives of teachers, selection, 75-6121
exclusive representation, 75-6118
right of teachers to organize and bargain collectively, 75-6118
scope of bargaining agreements, 75-6119
short title of act, 75-6115
strikes prohibited, 75-6120
proceedings to restrain strike, 75-6125
salary forfeitures, 75-6126
time of annual negotiation conferences, 75-6119
unfair practices prohibited, 75-6120
proceedings to restrain unfair practices, 75-6125
conferences and conventions during school year, 75-7405
days of teaching in week, 75-6102
definition of terms used throughout title, 75-6101
discipline of pupils, 75-6109
dismissal of teacher under contract, grounds and procedure, 75-6107
duties of teacher in general, 75-6108
employment of teachers
contract required, 75-6102
dismissal of teacher, grounds and procedure, 75-6107
nontenure teachers, notice of re-election or termination, 75-6105.1
tenure of teachers, 75-6103 to 75-6105
written acceptance required of nontenure teachers, 75-6105.1
exchange teachers, certification, 75-6005
holidays to be allowed, 75-6102
in-service training and individual consultation, 75-7506
institutes during school year, 75-7405
joint board, employment of teacher by, 75-6102
oath required of teachers, 75-6004
pupils, authority of teachers over, 75-6109
retirement system
benefits payable on retirement or death, 75-6208
exemption from taxation, execution and assignment, 75-6215
board continued in department of administration, 82A-212
investment functions transferred, 82A-205
continuation of 1937 system, 75-6202
contributions by employers to pension accumulation fund, 75-6207
budgeting and tax levy for contributions, 75-7204
contributions by teachers in addition to required deductions, 75-6207
corporate powers of system, 75-6202
correction and adjustment of errors, 75-6217
deductions from teachers' salaries, computation and payment to board, 75-6207
definition of terms, 75-6201
dormant accounts, transfer to pension accumulation fund, 75-6206
employer's duties under system, 75-6214
expense fund, sources and disbursements, 75-6207
former retirement system discontinued, 75-6218
service credit for prior service, 75-6213
fraudulent statement or records as misdemeanor, 75-6217
funds in which assets of system held, 75-6207
governing board of system, composition, appointment and terms of members, 75-6203
dealing with retirement system prohibited, 75-6206
per diem and expenses of members, 75-6204
powers and duties of board, 75-6205
quorum of board, 75-6203
guaranty of interest, maintenance of reserves and payment of benefits, 75-6216
interest rate, establishment and apportionment, 75-6206
investment of funds, 75-6206

SCHOOLS (Continued)
Teachers (Continued)
retirement system (Continued)
membership in system, eligibility for, 75-6209
application for membership, 75-6212
inactive membership, 75-6210
termination of membership, 75-6211
name of system, 75-6202
reserve funds for benefits payable, 75-6207
service creditable to members, 75-6212
out-of-state employment credit, 75-6213
service prior to establishment of system, 75-6213
tax-deferred annuity program, individual accounts to be established, 75-6219
treasurer as custodian of funds, 75-6206
withdrawal of contributions by inactive member, 75-6208
state teachers' association annual sessions, attendance, 75-6111
strikes by teachers prohibited, 75-6120
proceedings to restrain strikes, 75-6125
salary forfeiture, 75-6126
student teachers exempt from certification, rights and duties, 75-6001
tenure of teacher after four years, 75-6103
nontenure teachers, notification of re-election or termination, 75-6105.1
re-employment of tenure teacher, notice required, 75-6105
termination of tenure teacher, notice and hearing required, 75-6104
Technical education, 75-7707 to 75-7715—See Post-secondary vocational-technical centers, above
Textbooks
bribery in selection of books, penalties for, 75-7610
dealers in textbooks
agreements required for license, 75-7605
bond required of dealers, 75-7605
bribery by dealer, penalties, 75-7610
complaints against dealers, notice and action on, 75-7607
issuance of license, 75-7605
license required of dealer, 75-7605
penalty for unlicensed business, 75-7608
purchase from licensed dealer required, 75-7604
restriction of competition by dealer, actions on, 75-7609
definition of terms, 75-7601
free textbooks to be provided by district, 75-7602
prices at which books to be offered, 75-7605
purchase from licensed dealer required, 75-7604
restriction of competition, actions on, 75-7609
sale of books on request by parent, 75-7602
sample textbooks furnished to school officials, 75-7610
selection and adoption of textbooks by local officials, 75-7603
Traffic education
account established in state treasury, 75-7902
administrative costs deducted from traffic education account, 75-7906
definition of terms, 75-7901
distribution of moneys to districts conducting programs, 75-7906
district programs, establishment, 75-7905
eligibility of students for courses, 75-7905
fines and bail forfeitures paid into account, 75-7902
transmittal to treasurer by courts, 75-7903
juvenile offenders, payments into account, 94-801-2
license fees, portions paid into account, 75-7902
license, issuance after completion of course, 31-127
safety patrols, organization and operation, 75-8310
superintendent of public instruction's duties with respect to program, 75-7904
time of giving courses, 75-7905

References are to Title and Section numbers

SCHOOLS (Continued)
Transportation of pupils
appeals in transportation matters, 75-7015
areas for transportation service within county, establishment, 75-7015
budgeting for transportation, 75-7020
buses used for transportation
budgeting for purchase, rental and operation, 75-7020
definition of "school bus," 75-7002
depreciation reserve for replacement of buses and equipment, 75-7024
drivers' qualifications, 75-7003
flashing lights required, 32-21-132
use of lights, 32-2197
insurance on school bus operation, 75-7011
markings required on buses, 75-7002
purchase of buses by school district, 75-7011
radio equipment for buses, 75-7011
railroad, procedure when crossing, 75-7007
rental of bus by school district, 75-7011
standards and criteria prescribed by board of public education, 75-7004
stopping required for school bus, 75-7007
charges for discretionary transportation furnished by district, 75-7009
contracts for transportation of children authorized, 75-7011
advertising for bids and award to lowest responsible bidder, 75-7013
forwarding of contracts to county superintendent, 75-7020
payments by district, contract and performance required, 75-7013
procedure for execution of contracts, 75-7012
time of awarding contracts, 75-7012
county transportation committee, membership and organization, 75-7014
duties of committee, 75-7015
definition of terms, 75-7001
eligibility for transportation, 75-7001
discretion of trustees to provide transportation to pupil not otherwise eligible, 75-7009
private school pupils, 75-7010
hearings and appeals on transportation matters, 75-7015
individual transportation, contracts for, 75-7012
maximum length of trip for elementary pupil, 75-7008
mileage distances, determination, 75-7017
parent or guardian providing own transportation, 75-7008
policies and standards established by board of education, 75-7004
private and parochial school children, transportation furnished to, 75-7010
residence of pupil, determination, 75-7016
revenue estimates for transportation budget, 75-7021
special education programs, transportation provided for, 75-7814
preschool and adult education, aid to, 75-7816
state reimbursement for transportation, 75-7815
state and county aid to transportation
bus transportation, maximum rates of reimbursement, 75-7018
county reimbursement to districts, 75-7023
individual transportation, maximum rates for reimbursement, 75-7019
state reimbursement to districts, 75-7022
superintendent of public instruction's duties with respect to transportation, 75-7005
tax levies for transportation, computation and reporting, 75-7021
trustees to provide transportation to eligible pupils, 75-7008
discretionary transportation of ineligible pupils, 75-7009
violation of law, removal from office or cancellation of contract, 75-7006
Truancy prosecutions, 75-6307
Types of schools defined, 75-6601
Visitation of schools by trustees, 75-5934
Visual, aural and other media, library maintained by superintendent, 75-7511
Vocational education
board of education duties as board for vocational education, 75-7702
definition of terms, 75-7701

SCHOOLS (Continued)
Vocational education (Continued)
districts authorized to establish programs, 75-7704
federal act, acceptance, 75-7705
moneys received, deposit and disbursement, 75-7706
post-secondary vocational-technical centers, 75-7707 to 75-7715 — See Post-secondary vocational-technical centers, above
superintendent's duties as executive officer of board, 75-7703
treasurer as custodian of vocational education moneys, 75-7706
university unit authorized to establish programs, 75-7704
Year, number of school days in, 75-7402
definition of terms, 75-7401
post-secondary vocational-technical centers, 75-7711

SEARCH AND SEIZURE
Admissibility of articles or things seized as evidence in other proceedings, 95-718
Arrest, search and seizure authorized as incident to, 95-701
Authority to make search and seizure, 95-701
Consent of accused or other person, search and seizure authorized, 95-701
Constitutional prohibition against unreasonable searches and seizures, 1972 Const., II, 11
Illegally seized evidence, motion to suppress, 95-1806
Inspections granted by law, searches and seizures authorized, 95-701
Legality, when search and seizure not illegal, 95-717
Motion to suppress evidence illegally seized, 95-1806
Property or things seized
admissibility in other proceedings, 95-718
custody and disposition of things seized under warrant, 95-713
custody and disposition of things seized without warrant, 95-714
return of property seized, 95-715
return to court of things seized under warrant, 95-712
unclaimed property, disposition of, 95-716
Warrant
application, filing of, 95-706
definition, 95-703
detention and search of persons on premises, 95-710
execution, procedure, use of force, 95-708, 95-709
grounds for search warrant, 1972 Const., II, 11; 95-704
limitation on time when warrant may be executed, 95-711
scope of search, 95-705
search and seizure authorized by authority of, 95-701
service, by whom served, procedure, 95-707, 95-708
time warrant may be executed, 95-711
Without warrant, scope of search, 95-702
custody and disposition of things seized, 95-714
return of property seized, 95-715

SEAT OF GOVERNMENT
Executive officers to reside at seat of government, 1972 Const., VI, 1
Helena as seat of government except during emergency, 1972 Const., III, 2

SECRETARY OF STATE
Board of land commissioners, member of, 1972 Const., X, 4
Business corporations, powers and duties relating to—See BUSINESS CORPORATION ACT, Secretary of state
Business trusts—See BUSINESS TRUSTS, Secretary of state
Candidacy for public office during term authorized, 1972 Const., VI, 5
Canvassers' board transferred to secretary's office, 82A-2102
Duties, 1972 Const., VI, 4
Election, 1972 Const., VI, 2
Executive branch, member of, 1972 Const., VI, 1
Fees collectible, 25-102
cooperative associations, 14-201, 14-204
cooperative marketing associations, 14-422

References are to Title and Section numbers

SECRETARY OF STATE (Continued)
Fees collectible (Continued)
rural electric and telephone cooperatives, 14-527
water users' association articles, filing and recording, 25-110
Impeachment, subject to, 1972 Const., V, 13
Inability to discharge powers and duties of office, legislative declaration of vacancy, 59-609
Lobbyist, duties concerning—See LOBBYING
Nonprofit corporations, powers and duties relating to—See NONPROFIT CORPORATION ACT, Secretary of state
Oath of office, 1972 Const., III, 3
Other government employment prohibited during term, 1972 Const., VI, 5
Qualifications, 1972 Const., VI, 3
Religious corporation sole
articles of incorporation, filing with secretary of state, 15-2404
certificate of incorporation, issuance by secretary of state, effect, 15-2405
Residence at seat of government required, 1972 Const., VI, 1
Rosters prepared from election records, 43-206.1
Salary, 1972 Const., VI, 5; 25-501
Service of process on secretary of state as agent, M. R. Civ. P., Rule 4D(6)
Term of office, 1972 Const., VI, 1
Vacancy in office, how filled, 1972 Const., VI, 6

SECURED TRANSACTIONS
Acceleration of performance, good faith required in exercising option, 87A-1-208
Accessions to property, conflicting security interest in, 87A-9-314
Accounts sold as part of business, exclusion from chapter, 87A-9-104
After-acquired collateral
new value, when considered to have been given by secured party, 87A-9-108
time of attachment of security interest to, 87A-9-204
Agreement for security interest
contents required, 87A-9-203
effect of agreement against parties, purchasers and creditors, 87A-9-201
required for enforceability of security interest, 87A-9-203
Agreement to subordinate prior interest, 87A-9-316
Antecedent debt secured by after-acquired collateral, when debt secured not considered antecedent, 87A-9-108
Assignment of collateral for benefit of creditors of debtor—See Lien adverse to security interest, below
Assignment of security interest, filing not required to continue perfected interest, 87A-9-302
Attachment of collateral by third party—See Lien adverse to security interest, below
Attachment of security interest, requirements for, 87A-9-204
Authenticity of third-party documents presumed, 87A-1-202
Bank accounts excluded from chapter, 87A-9-104
Bankruptcy of debtor, status of trustee—See Lien adverse to security interest, below
Bulk Transfer chapter, secured transactions not subject to, 87A-6-103, 87A-9-111
Care required by secured party in possession of collateral, 87A-9-207
Certificate of title indicating security interest, conflict of laws, 87A-9-103
Citation of Uniform Commercial Code chapter, 87A-9-101
Claim against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206
Claims of account debtor against creditor, assertion against assignee of account, 87A-9-318
Collateral to secure debt
after-acquired collateral, time of attachment to, 87A-9-204
list of collateral supplied by secured party to debtor, 87A-9-208
owner of collateral other than debtor, rights and immunities, 87A-9-112
possession of collateral by secured party, rights and duties of parties, 87A-9-207
proceeds of disposition of collateral, attachment of security interest to, 87A-9-306
release of collateral, filing, 87A-9-406
title immaterial in applying chapter, 87A-9-202
transfer of debtor's rights in collateral, 87A-9-311
use of collateral by debtor, effect of agreements permitting, 87A-9-205
use of collateral by secured party in possession, 87A-9-207

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)
Collection, assignment of accounts for excluded from chapter, 87A-9-104
Collection of assigned accounts by debtor, effect of agreement permitting, 87A-9-205
Commercial Paper chapter subject to Secured Transactions chapter, 87A-3-103
Commingled goods, conflicting security interest in, 87A-9-315
Commingling of collateral by debtor, effect of agreements permitting, 87A-9-205
Conflict of laws, 87A-9-103
  restriction on agreement as to applicable law, 87A-1-105
Consumer Loan Act, application to transactions, 87A-9-203
Course of dealing between parties, application, 87A-1-205
Creditors, effect of security agreement against, 87A-9-201
Default by debtor
  attorney fee to be allowed in foreclosure action, 93-8613
  collection on accounts or instruments by secured party, 87A-9-502
  deficiency in collateral, liability of debtor, 87A-9-504
    collections on accounts or instruments by secured party, 87A-9-502
  disposition of collateral by secured party, 87A-9-504
    compulsory disposition, 87A-9-505
    price at which sale made, reasonableness, 87A-9-507
  judgment for secured party, relation back of judgment lien, 87A-9-501
  liability of secured party for noncompliance with requirements, 87A-9-507
  possession of collateral taken by secured party, 87A-9-503
  purchase by secured party at sale of collateral, 87A-9-504
  real property included in security agreement, remedies available, 87A-9-501
  redemption by debtor after default, 87A-9-506
  remedies available to debtor, 87A-9-501
  remedies available to secured party, 87A-9-501
  retention of collateral by secured party in satisfaction of debt, 87A-9-505
  sale of collateral by secured party, 87A-9-504
    compulsory sale, 87A-9-505
    judicial sale, right of secured party to purchase at, 87A-9-501
    postponement of sale, 52-313
    price at which sale made, reasonableness, 87A-9-507
    report of sale, filing and recording, 52-314
    sheriff making seizure and sale, 52-312
    time of sale, 52-313
  subrogation of guarantor or endorser to rights of secured party, 87A-9-504
  surplus proceeds of collateral, disposition, 87A-9-504
    collections on accounts or instruments by secured party, 87A-9-502
  waiver of certain rights of debtor prohibited, 87A-9-501
Defenses against seller or lessor, waiver by buyer or lessee against assignee, 87A-9-206
Defenses available to account debtor against assignee of account, 87A-9-318
Definition of terms, 87A-9-105
  "account," 87A-9-106
  "consumer goods," 87A-9-109
  "contract right," 87A-9-106
  "equipment," 87A-9-109
  "farm products," 87A-9-109
  general definitions in Uniform Commercial Code, 87A-1-201
  "general intangibles," 87A-9-106
  index of definitions, 87A-9-105
  "inventory," 87A-9-109
  "purchase money security interest," 87A-9-107
Description of property, sufficiency, 87A-9-110
Disposal of collateral by debtor, effect of agreement permitting, 87A-9-205
Effectiveness of security agreement among parties, 87A-9-201
Exclusion of transactions from chapter, 87A-9-104
Federally governed security interests excluded from chapter, 87A-9-104
Filing of financing statement
  acts constituting filing, 87A-9-403
  amendments to statement, effective date, 87A-9-402
  assignment of security interest or rights under financing statement, 87A-9-405
    filing not required to continue perfected status, 87A-9-302
  change of debtor's address or location of collateral, effect, 87A-9-401

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)
Filing of financing statement (Continued)
conflict of laws, 87A-9-103
contents of statement required, 87A-9-402
continuation statements, manner of filing and effect, 87A-9-403
destruction of record permitted after lapse of time, 59-516.1
duration of effectiveness of filing, 87A-9-403
erroneous filing in improper place, effect, 87A-9-401
fees chargeable for filing, 87A-9-403
assignment of security interest, filing, 87A-9-405
information, fees chargeable for furnishing, 87A-9-407
release of collateral, filing, 87A-9-406
termination statement, 87A-9-404
formal requisites of statement, 87A-9-402
future goods, application of financing statement to, 87A-9-402
indexing of statements, 87A-9-403
information furnished from files, 87A-9-407
lapse of security interest on expiration of period for which filing effective, 87A-9-403
numbering of statement, 87A-9-403
out-of-state transactions filed in this state, 87A-9-103
period for which retained, 59-516.1
place of filing, 87A-9-401
public inspection, statement held for, 87A-9-403
public utility statement, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code applicable, 87A-9-302.3
purchase money security interest, time allowed for filing, 87A-9-301
release of collateral, filing, 87A-9-406
required for perfection of security interest, exceptions, 87A-9-302
signature affixed to statement, 87A-9-402
statutory registration systems, interests in property subject to, 87A-9-302
termination statement, furnishing and filing, 87A-9-404
Fixtures, priority of security interest in, 87A-9-313
Foreclosure of security interest
joinder with action for recovery of possession, 52-312
proceedings as in foreclosure of real estate mortgage, 52-312
seizure and sale by sheriff
authority in security agreement for seizure, 52-312
indemnity bond to sheriff given by secured party, 52-312
postponement of sale, 52-313
report of sale, filing and recording, 52-314
time of sale, 52-313
Future advances, coverage by security agreement, 87A-9-204
Good faith required, 87A-1-203
Illegal transactions not validated by chapter, 87A-9-201
Insolvency of debtor, attachment of security interest to proceeds of disposition of collateral, 87A-9-306
Installment sales act unaffected by chapter, 87A-9-201
Insurance policy interest, transfer excluded from chapter, 87A-9-104
Judgment rights excluded from chapter, 87A-9-104
Landlord's lien excluded from chapter, 87A-9-104
Lien adverse to security interest
attachment of collateral by third party, method of levy, 93-4338
priority over security interest of liens in ordinary course of business, 87A-9-310
subordination of unperfected security interest to prior lien, 87A-9-301
Livestock as collateral, 52-319 to 52-323, 87A-9-203
collection of debt, officers not responsible for, 52-323
contents of notices filed, 52-320
fees chargeable for filing, disposition, 52-322
filing with recorder of marks and brands, 52-319
satisfaction of agreement, duty to file, 52-321
Manufactured products, security interest in material attaching to, 87A-9-315
Mechanic's and materialman's lien excluded from chapter, 87A-9-104

References are to Title and Section numbers

SECURED TRANSACTIONS (Continued)
Modification of contract after assignment of account receivable, effect as against assignee, 87A-9-318
Motor vehicles, security interest in, 53-110
Negotiable instrument signed by buyer with security agreement, effect, 87A-9-206
Notification to account debtor of assignment of account receivable, 87A-9-318
Pawnbroker law, application to transactions, 87A-9-203
Perfection of security interest
bailed goods, perfection of interest in, 87A-9-304
chattel paper, means of perfection, 87A-9-304
continuity of perfected status under different means of perfection, 87A-9-303
filing necessary to perfect interest, 87A-9-302—See also Filing of financing statement, above
instruments, security interest in, 87A-9-304
negotiable documents, interest in, 87A-9-304
possession by secured party as means of perfection, 87A-9-305
priority between interests governed by time of perfection, 87A-9-312
purchase money security interest, time allowed for filing, 87A-9-301
statutory registration systems, property subject to, 87A-9-302
time of perfection, 87A-9-303
Possession of collateral by secured party, rights and duties of parties, 87A-9-207
perfection of security interest by possession, 87A-9-305
security interest supported by possession, 87A-9-203
Preservation of collateral by secured party in possession, 87A-9-207
Priorities among conflicting security interests in same collateral, 87A-9-312
fixtures, 87A-9-313
Proceeds of disposition of collateral, attachment of security interest to, 87A-9-306
Processed goods, security interest in, 87A-9-315
Purchase money security interest governed by chapter on sales, 87A-9-206
priority as against other security interests, 87A-9-312
time allowed for filing of financing statement, 87A-9-301
Purchaser of collateral, effect of security agreement against, 87A-9-201
chattel paper purchaser, priority as against security interest, 87A-9-308
consumer goods purchaser taking free of security interest, 87A-9-307
farm equipment purchaser taking free of security interest, 87A-9-307
negotiable instrument or document, rights of holder in due course against security interest, 87A-9-309
nonnegotiable instrument purchaser, priority as against perfected security interest, 87A-9-308
ordinary course of business buyer taking free of security interest, 87A-9-307
Railway rolling stock equipment trusts excluded from chapter, 87A-9-104
Raw material, security interest attaching to finished product, 87A-9-315
Real estate interests excluded from chapter, 87A-9-104
Real property included in security agreement, remedies available on default of debtor, 87A-9-501
Redemption of collateral by debtor after default, 87A-9-506
Repossession of goods by seller of account receivable, attachment of account buyer's interest to goods, 87A-9-306
Reservation of rights by party while performing or accepting performance, 87A-1-207
Retail Installment Sales Act, application to transactions, 87A-9-203
Sale of goods, application of chapter to security interest arising under, 87A-9-113
Sales chapter inapplicable to transactions, 87A-2-102
Scope of Uniform Commercial Code chapter, 87A-9-102
Setoff rights excluded from chapter, 87A-9-104
Short title of Uniform Commercial Code chapter, 87A-8-101
Small loans laws unaffected by Secured Transactions chapter, 87A-9-201
Statement of account by secured party to debtor, 87A-9-208
Statutory liens, chapter inapplicable, 87A-9-102
Subordination of priority by agreement, 87A-9-315
Subordination of unperfected security interest to prior lien, 87A-9-301
Time allowed for required actions, 87A-1-204
Time of attachment of security interest, 87A-9-204
Title to collateral immaterial in applying chapter, 87A-9-202
Tort claims excluded from chapter, 87A-9-104

SECURED TRANSACTIONS (Continued)
Transfer of debtor's rights in collateral, 87A-9-311
Usage of trade, application, 87A-1-205
Use of collateral by debtor, effect of agreements permitting, 87A-9-205
secured party not liable for debtor's acts or omission in use, 87A-9-317
Use of collateral by secured party in possession, 87A-9-207
Usury laws unaffected by chapter, 87A-9-201
Wage assignments excluded from chapter, 87A-9-104
Waiver of certain rights of debtor prohibited, 87A-9-501
Warehouseman reserving security interest in goods covered by warehouse receipt, 87A-7-209

SECURITIES REGISTRATION
See also INVESTMENT SECURITIES, 87A-8-101 to 87A-8-406
Accountant excluded from definition of "investment adviser," 15-2004
Annuity contracts excluded from definition of "security," 15-2004
Attorneys excluded from definition of "investment adviser," 15-2004
Bank securities exempt, 15-2013
Banks excluded from definition of "investment adviser," 15-2004
Bonds included in definition of "security," 15-2004
Bonuses construed as sales, 15-2004
Broker-dealers
definition, 15-2004
federally registered exempt securities, payment of commission authorized, 15-2014 (8)
fees payable for registration, 15-2016
records and accounts required, 15-2006
registration required, procedure, 15-2006
service of process on dealer, 15-2015
suspension or revocation of registration, 15-2006
Building and loan securities exempt, 15-2013
Burden of proof as to exemption, 15-2025
Carrier securities, when exempt from registration, 15-2013
Certificates of deposit included in definition of "security," 15-2004
Citation of act, 15-2002
Civil liability for unlawful acts and practices, 15-2022
Collateral-trust certificates included in definition of "security," 15-2004
"Commissioner" defined, 15-2004
Coordination, registration by
contents and filing of statement, 15-2009
stop order on failure to file price amendment, 15-2009
time registration effective, 15-2009
Copies of documents filed, availability to public, 15-2024
Criminal liability, 15-2021
Damages, measure of civil liability, 15-2022
Debentures included in definition of "security," 15-2004
Definition of terms, 15-2004
Denial of registration, grounds and procedure, 15-2012
Effect of registration, 15-2011
Employee benefit plans, exemption of investment contracts in connection with, 15-2013
Engineers, exclusion from definition of "investment adviser," 15-2004
Escrow deposits of securities to be issued to promoters, 15-2011
Evidences of indebtedness included in definition of "security," 15-2004
Exchange-listed securities, exemption, 15-2013
Exempt securities, 15-2013
Exempt transactions, 15-2014
Expenses of investigation, payment by issuer or broker-dealer, 15-2024
False and misleading statements filed unlawful, 15-2017
Federal statutes defined, 15-2004
Fees payable for registration and certificates, 15-2016
disposition of moneys received, 15-2024
Forms prescribed by commissioner, 15-2024
Fraudulent practices prohibited, 15-2005
Gift of assessable stock construed as offer and sale, 15-2004

References are to Title and Section numbers

SECURITIES REGISTRATION (Continued)
Good faith conformity exempt from liability, 15-2024
Governmental securities exempt, 15-2013
"Guaranteed" defined, 15-2004
Impounding of proceeds of sale, 15-2011
Incorporation of documents by reference in registration statement, 15-2011
Information confidential, 15-2024
Injunction against unlawful acts and practices, 15-2020
Insurance companies excluded from definition of "investment adviser," 15-2004
Insurance policies excluded from definition of "security," 15-2004
Insurance policies exempt, 15-2013
Investigation by investment commissioner, 15-2019
Investment advisers
  assignment of contract, consent required, 15-2005
  compensation of adviser, prohibited provisions, 15-2005
  contracts, required provisions, 15-2005
  definition, 15-2004
  fees payable for registration, 15-2016
  partnership changes, notice required, 15-2005
  records and accounts required, 15-2006
  registration required, procedure, 15-2006
  service of process on adviser, 15-2015
  suspension or revocation of registration, 15-2006
Investment commissioner
  administration of act, 15-2024
  enforcement powers, 15-2019, 15-2020
  office created, 15-2001
Investment contract included in definition of "security," 15-2004
Isolated transactions, exemption, 15-2014
"Issuer" defined, 15-2004
Joint liability for damage from unlawful practices, 15-2022
Judicial sales, exemption, 15-2014
Methods of registration enumerated, 15-2007
Mining interests included in definition of "security," 15-2004
Misleading statements as to effect of registration unlawful, 15-2018
"Non-issuer" defined, 15-2004
Non-issuer transaction, when exempt, 15-2014
  revocation of exemption by commissioner, notice, hearing, 15-2014
Non-profit corporations, exemption of securities, 15-2013
Notes included in definition of "security," 15-2004
Notification, registration by
  contents and filing of statement, 15-2008
  eligibility of securities for registration by notification, 15-2008
  time of effectiveness of registration, 15-2008
"Offer" defined, 15-2004
Oil and gas interests included in definition of "security," 15-2004
Participation certificates included in definition of "security," 15-2004
Penalties for violation, 15-2021
"Person" defined, 15-2004
Pledgee, exemption of sales by, 15-2014
Pre-organization certificates and subscriptions included in definition of "security," 15-2004
Private offerings, exemption, 15-2014
Profit-sharing agreements, certificates included in definition of "security," 15-2004
Public hearings required, 15-2024
Public utility securities, when exempt, 15-2013
Publishers excluded from definition of "investment adviser," 15-2004
Qualification, registration by
  contents and filing of statement, 15-2010
  prospectus, required contents, 15-2010
  time registration effective, 15-2010
Register of applications and statements open for inspection, 15-2024
Reorganization issues, exemption, 15-2014
Reports to be filed with commissioner after registration of securities, 15-2011

SECURITIES REGISTRATION (Continued)
Review of orders of commissioner, 15-2023
Revocation of registration, grounds and procedure, 15-2012
Rules, adoption by commissioner, 15-2024
"Sale" defined, 15-2004
Sale of unregistered securities prohibited, 15-2007
Salesmen
association with issuer or broker-dealer required, 15-2006
bond required for registration, 15-2006
definition, 15-2004
fee for registration, 15-2016
registration required, procedure, 15-2006
service of process on salesmen, 15-2015
Savings institutions excluded from definition of "investment adviser," 15-2004
Securities exempt, 15-2013
"Security" defined, 15-2004
Service of process on registrant or issuer, 15-2015
Short-term obligation, exemption, 15-2013
"State" defined, 15-2004
Statement for registration, by whom filed, 15-2011
Stock dividends, exemption, 15-2014
Subpoena powers of investment commissioner, 15-2019
Suspension of registration, grounds and procedure, 15-2012
federal suspension or stop order, automatic suspension on, 15-2011
Teachers, exclusion from definition of "investment adviser," 15-2004
Title of act, 15-2002
Treasury stock included in definition of "security," 15-2004
Trust companies excluded from definition of "investment adviser," 15-2004
Underwriter purchases, exemption, 15-2014
Uniformity of construction of act, 15-2003
Unsolicited offers, exemption, 15-2014
Voting-trust certificates included in definition of "security," 15-2004
Warrant to purchase security construed as offer, 15-2004
Withdrawal of registration, registration statement, 15-2011

SEEDS
Agricultural seeds, labeling, transfer between labelers, requirements, 3-802.2
Classifications, revision of, 3-821
Dealers, processors and warehousemen, license required, 3-311
activities covered by license, 3-311 (1), (2)
application for license, 3-311 (3)
bonding and insurance requirements, establishment by rule authorized, 3-311 (7)
cancellation of licenses, grounds, 3-311, 3-313, 3-316
certified seed grower processing or labeling from own production exempt, 3-311 (1)
dealer's license, application, fee, expiration, cancellation, 3-313
additional fee not required of certain licensees, 3-313 (1)
definition of terms, 3-310
equipment and handling procedures, establishment of minimum standards by rule, 3-311 (4)
fee for license, 3-311
inspections during normal business hours authorized, 3-311 (4)
issuance on fiscal year basis, 3-311 (2)
judicial review in district court, 3-316
moneys to be deposited in general fund, 3-317
nonresident licensees, designation of resident agent, 3-311 (3)
penalty for violation of act, 3-316
rules, promulgation by department, 3-315
screenings, restrictions on movement, 3-312
violations, 3-314
violations, civil and criminal remedies, 3-316
Definitions, 3-802.1
Laboratory testing of samples submitted by department, 3-806.1
Prohibitions, 3-820
Vegetable and flower seeds, labeling, 3-802.3

References are to Title and Section numbers

SELF-INCRIMINATION
Constitutional protection against self-incrimination, 1972 Const., II, 25

SENTENCES
See CRIMINAL PROCEDURE, Sentence and judgment
Appellate review of legal sentences, 95-2501 to 95-2530
Commutation of prison sentence to commitment to juvenile facilities, 80-2210
Good time allowance to prison inmates, 80-1905
Post-conviction hearing, 95-2601 to 95-2608
Western Interstate Corrections Compact, 95-2308 to 95-2312

SEPARATION OF POWERS
Constitutional declaration, 1972 Const., III, 1

SEPTIC TANKS
Cleaning of septic tanks, 69-5401 to 69-5408—See SANITARY LICENSEES

SERVICE OF PROCESS
Affidavit of service, M. R. Civ. P., Rule 4 D(9)
Attorney general, service upon in tort actions against state, 83-704
Attorney, service on, M. R. Civ. P., Rule 5(b)
Continuance to allow opportunity to defend, M. R. Civ. P., Rule 4 D(6)(b)
Criminal procedure, summons, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Delivery of copy, manner of making, M. R. Civ. P., Rule 5(b)
Fraternal benefit societies, service through commissioner of insurance, 40-5352
Industrial accident board under occupational disease act, service of process on, 92-1344
Insurers, service through commissioner of insurance, 40-2818
  proceedings after service, 40-2819
Jurisdiction of person acquired by service, M. R. Civ. P., Rule 4 B(2)
Justices' court, service of summons, 93-6711
Milk control board, method of serving, 27-429
Motions, when service required, M. R. Civ. P., Rule 5(a)
Motion to raise insufficiency, M. R. Civ. P., Rule 12(b)
Numerous defendants, service on, M. R. Civ. P., Rule 5(c)
Orders, when service required, M. R. Civ. P., Rule 5(a)
Personal service outside state, M. R. Civ. P., Rule 4 D(3)
Personal service within state, M. R. Civ. P., Rule 4 D(2)
Persons by whom served, M. R. Civ. P., Rule 4 D(1)
Pleadings, when service required, M. R. Civ. P., Rule 5(a)
Proof of service, M. R. Civ. P., Rules 4 D(8), 5(f)
  amendment of proof, M. R. Civ. P., Rule 4 D(7)
Publication, service by, M. R. Civ. P., Rule 4 D(5)
Real estate brokers residing outside state, service through real estate commission, 66-1936
Sanitarians registration council, service on, 69-3409
Secretary of state, service through, M. R. Civ. P., Rule 4 D(6)
Securities act registrant or issuer, service on, 15-2015
Sheriffs and deputies to serve process, M. R. Civ. P., Rule 4 D(1)
Subpoena, service, M. R. Civ. P., Rule 45(c)
Third parties, service on, M. R. Civ. P., Rule 14(a)
Time allowed for proceedings after service by mail, M. R. Civ. P., Rule 6(e)
Unauthorized insurers, service on
  attorney's fee, when included in judgment, 40-3408
  citation of act, 40-3403
  commissioner as agent for process, 40-3404
  default judgment, when allowed, 40-3405
  defense of action, 40-3407
  exemptions from service of process provisions, 40-3406
  motion to quash or set aside service, 40-3407
  procedure for service, 40-3405
  uniformity of interpretation of act, 40-3403
Unit ownership property, service with respect to, 67-2338
  agent to receive service named in declaration, 67-2314
  change of agent to receive process, 67-2339

SETOFF
Assignments excluded from Uniform Commercial Code, 87A-9-104

SEWAGE DISPOSAL
Definition of terms, 69-4802
Domestic water supply, protection, 69-4901 to 69-4908—See WATER SUPPLY, Domestic water supply
Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See STREETS, Undergound facility
Municipal service to industry or person outside municipality, 11-1001
Permit required for sewage disposal system, 69-4806
Policy of state, 69-4801
Privately owned waters, chapter not applicable to, 69-4804
Subdivision plans subject to sanitary restriction, 69-5003
definition of "subdivision," 69-5002
plat of subdivision not to be filed unless in compliance, 69-5004
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

SHERIFFS
Accident report forms for motorboat or vessel accidents, 69-3512
Arrest, sheriffs privileged from arrest, when, 95-616
Consolidation of office with police departments in certain counties, 16-2726 to 16-2730—See COUNTIES, Department of public safety
Deputies, qualifications of, 16-3705
work week, days off, in first and second class counties, 16-3705.1
Fingerprints taken on felony arrest, 80-2003
salary withheld on failure to furnish information, 80-2004
Fish and game laws, enforcement by sheriffs, 26-114
Identification bureaus, assistance by state bureau in establishing, 80-2006
Law enforcement teletypewriter communications committee, membership on, 82-3902
Liability insurance provided by county for privately owned vehicle, 16-2725
Liability insurance to be purchased for department, 16-2731 to 16-2733
coverage, 16-2732
persons covered, 16-2731
policy limits, 16-2731
purchase from county general fund, 16-2733
Medical expense for prisoners, reimbursement, 16-2818
Practice of law by sheriff, restrictions on, 93-902
Prisoners, claims for expense of maintenance, 16-2818
Salaries, conformity to schedule required, 25-609.1
Service of process by sheriffs, M. R. Civ. P., Rule 4 D(1)
Summoning of jurors, 93-1509
Vehicle, purchase or lease with county funds authorized, 16-2724
Work release program for prisoners, duties, 95-2216

SHODDY
Condemnation of mattresses in violation, 69-4706
Definition of "mattress," 69-4701
Inspections by health authorities, 69-4705
Label required on each mattress, 69-4702
Prohibited acts, 69-4703
separate offense for each mattress made or sold, 69-4707
Rules and standards of state board, 69-4704

SHOOTING PRESERVES
See FISH AND GAME, Shooting preserves, 26-1601 to 26-1614

SIDEWALKS
Municipal construction without special improvement district, 11-2226

SIGNATURES
Facsimile signatures of public officials—See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

SKI LIFTS
See PASSENGER TRAMWAYS, 69-6601 to 69-6617

SLANDER
Notice to publisher or broadcaster and opportunity to correct, 64-207.1
Truth as evidence in suits and prosecutions, jury determination of law and facts, 1972 Const., II, 7

SMALLPOX
Vaccination required for school attendance, 69-4515

SMALL TRACT FINANCING ACT
See TRUST INDENTURES, 52-401 to 52-417

SNOWMOBILES
See MOTOR VEHICLES, Snowmobiles, 53-1012 to 53-1028

SOIL AND WATER CONSERVATION
Districts, 76-101 to 76-233—See CONSERVATION DISTRICTS
Water resources board, establishment, members, 89-103—See WATER RESOURCES BOARD

SOLDIERS AND SAILORS
See MILITIA AND MILITARY; VETERANS

SOVEREIGN IMMUNITY
Doctrine abolished, 1972 Const., II, 18; 83-706.1

SOVEREIGNTY
Popular sovereignty, 1972 Const., II, 1
State sovereignty, 1972 Const., II, 2

STATE AGENCY FOR SURPLUS PROPERTY
Cost of operation, payment from receipts from sales, 82-3104
Rebate of surplus funds, 82-3104

STATE APIARIST
Abolition of position and transfer of functions, 82A-502
  functions transferred to department of agriculture, 82A-303

STATE AUDITOR
Assignment of claims against state
  effect of assignment, 83-904
  limitations on assignment, 83-902
  notice to auditor, 83-901
  rules promulgated by auditor, 83-903
Board of land commissioners, member of, 1972 Const., X, 4
Candidacy for public office during term authorized, 1972 Const., VI, 5
Duties, 1972 Const., VI, 4
Election, 1972 Const., VI, 2
Executive branch, member of, 1972 Const., VI, 1
Impeachment, subject to, 1972 Const., V, 13
Inability to discharge powers and duties of office, declaration of vacancy, procedure, 59-609
Insurance commissioner ex officio, 40-2701
Investment commissioner ex officio, 15-2001
Oath of office, 1972 Const., III, 3
Other government employment prohibited during term, 1972 Const., VI, 5
Qualifications, 1972 Const., VI, 3
Residence at seat of government, 1972 Const., VI, 1
Salary, 1972 Const., VI, 5; 25-501
Term of office, 1972 Const., VI, 1
Vacancy in office, how filled, 1972 Const., VI, 6
Warrants, order in which drawn, 79-104

References are to Title and Section numbers

STATE BOARD OF EDUCATION

Board of public education and board of regents as constituting state board, 1972 Const., X, 9; 75-5615
Board of public education as constituent, 1972 Const., X, 9; 75-5609
  composition of board, appointment and qualifications of members, 75-5610
  meetings of board, notice, 75-5613
  oath of office, 75-5610
  per diem and expenses of members, 75-5614
  powers and duties, 75-5617
  quorum, 75-5612
  record of proceedings required, 75-5616
  rules, adoption, 75-5616
  seal, adoption and use, 75-5616
  state equalization aid, administration and distribution, 75-6917
  transition from former board of education, procedure, 75-5618
  vacancies, filling by governor, 75-5610
Board of regents as constituent, 1972 Const., X, 9; 75-5609, 75-5615—See BOARD OF REGENTS
Budget requests, review and unification, 75-5615
Chairman in absence of governor, selection, 75-5615
Commissioner as nonvoting participant at meetings, 75-5615
Composition of board, 1972 Const., X, 9; 75-5609 (3)
Definition, 75-5609
Department of education, board as head, 82A-501
  functions continued in board, 82A-506
Governor as president and nonvoting participant at meetings, 75-5615
Long-range planning and co-ordinating and evaluating policies as responsibility of board, 75-5615
Meetings, 75-5615
Powers and duties, 1972 Const., X, 9; 75-5615, 75-5617 (3)
Quorum, 75-5615
Records of proceedings to be kept, 75-5616
Rules, adoption, 75-5616
Seal, adoption and use, 75-5616
Superintendent of public instruction as secretary, 75-5615
Tie vote at meetings, breaking by governor, 75-5615
Transition from former board of education, procedure, 75-5618
Vocational rehabilitation functions transferred, 82A-1903
  quasi-judicial functions, 82A-1907

STATE BOARD OF HEALTH

See DEPARTMENT OF HEALTH, Board of health

STATE BOARD OF REVIEW

Abolition of board and transfer of functions, 82A-202
Creation, membership and compensation, 79-2401 to 79-2404
Quorum and vacancies, 79-2407
Records, 79-2405, 79-2406
Reimbursement of general fund for costs of central services, 79-2409 to 79-2415

STATE CAPITOL

Budget requests for maintenance, repair, replacement, renewal and additions to state buildings, 82-3309
Building improvement and repair
  bonds, indentures and notes, issuance authorized, 78-737
    registration of instruments, 78-742
    sale of instruments, 78-742
    terms of instruments, 78-741
  borrowing power of board of examiners, 78-737
    maximum amount, 78-740
  contracts for work authorized, 78-739
  employment of architects and engineers authorized, 78-738
  legislative areas, consultation with legislative council, 78-746

References are to Title and Section numbers

STATE CAPITOL (Continued)
Building improvement and repair (Continued)
repayment of obligations, funds available for, 78-743
budget act inapplicable to appropriations, 78-745
sinking fund, deposit of moneys in, 78-744
Building program, scheduling to minimize effects of weather on construction and work opportunities, 78-910
Committee for building and planning, organization and meetings, 78-1301
master plan for development, factors considered, 78-1302
per diem and mileage of legislative members, 78-1304
report to legislature, 78-1303
Continuity of government, seat of government in Helena except during emergency, 1889 Const., V, 46; 1972 Const., III, 2
war, moving seat of state government, 82-3807
Controller and department of administration to oversee property in capitol area, 82-3309, 82-3310
Custodian, office abolished, 82-3322
Emergency temporary seat of government in event of enemy attack, designation, method, 82-1310
Employment security commission building
addition to building, 78-1011 to 78-1020
architect, employment, 78-1002, 78-1012
bids for construction, 78-1003, 78-1013
bond issues authorized, 78-1001, 78-1011
amount authorized, 78-1004, 78-1014
interest and sinking fund, 78-1008, 78-1018
interest rate, 78-1005, 78-1015
principal and interest, payment, 78-1007, 78-1017
purchase by board of land commissioners, 78-1009, 78-1019
registration of bonds, 78-1006, 78-1016
sale of bonds, 78-1006, 78-1016
terms and provisions of bonds, 78-1005, 78-1015
budget act inapplicable, 78-1010, 78-1020
contractor's bond, 78-1003, 78-1013
location, 78-1001, 78-1011
original building, 78-1001 to 78-1010
service buildings outside capitol area, 78-1021 to 78-1030—See UNEMPLOYMENT COMPENSATION, Commission
Executive officers to reside at seat of government, 1972 Const., VI, 1
Insurance of buildings on deductible plan, 78-1102
administration of plan, 78-1103
proceeds from insurance, deposit and use, 78-1101
Land grants for capitol building
dedication of funds accumulated, 78-503
deposit of revenue in federal and private revenue fund, 78-501
income dedicated to repayment of improvement and repair bonds, indentures and notes, 78-743
Location in Helena, 1972 Const., III, 2
Long-range building program financing
bonds authorized, form, contents and terms, 79-2202
amount of authorization, 79-2205
cigarette tax proceeds paid into funds, 84-5606.30
definition of terms, 79-2201
fiscal agent to assist state board of examiners, 79-2202
referendum on tobacco tax, 79-2203
refunding bonds authorized, 79-2203
sinking fund account, sources and use of funds, 79-2203
taxes pledged to sinking fund, 79-2203
vote required for authorization, 79-2202
waiver of security provisions by bondholders, 79-2204
Master plan for development of capitol area, 78-1302
Reconstruction and improvement
acquisition of land, 78-1201, 78-1203
architect and engineers, employment authorized, 78-1202

References are to Title and Section numbers

STATE CAPITOL (Continued)
Reconstruction and improvement (Continued)
bonds, indentures and notes, 78-1205 to 78-1208
borrowing power, 78-1201, 78-1204
budget act inapplicable, 78-1209
Veterans' and pioneers' memorial, purpose and use, 78-202
historical society and library, fittings and furnishings, 44-526
moneys available for expenditure in, 78-302
War, moving seat of state government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3807

STATE CONTROLLER
Abolition of office and transfer of functions, 82A-202
building code functions, 82A-1203
Appointment, 82-106
Building program of state, scheduling to minimize effects of weather on construction and work opportunities, 78-910
Claims against the state, processing, 82-109.1 to 82-109.4—See PUBLIC FINANCE, State finance
Department of administration, 82-3301 to 82-3322—See DEPARTMENT OF ADMINISTRATION
Duties, 82-109
ex-officio budget director, 79-1012
Examination into audits and reports, 82-110
Expenditure control, 82-109
Oath of office, 82-107
Qualifications, 82-106
Reports to governor and legislature, 82-3305
State board of review, controller as member and chairman, 79-2402, 79-2404
State printing, approval of claim for, 82-1910
Surplus property of state, power to dispose of, 82-1914
Treasury fund accounts, creation and abolition, 79-413
records of funds and accounts maintained by controller, 79-414
Uniform accounting system, 82-110

STATE DEPARTMENTS AND BOARDS
Appeals from administrative agencies, district court jurisdiction, 1972 Const., VII, 4
Appointment of officers, 1972 Const., VI, 8
Facsimile seal, use authorized, 59-1303
Governor as supervisor of departments, 1972 Const., VI, 8
Heads of departments, 1972 Const., VI, 8
removal from office as provided by law, 1972 Const., V, 13
reports to governor, 1972 Const., VI, 15
Interlocal co-operation, 16-4901 to 16-4904—See INTERLOCAL CO-OPERATION
Number of principal departments, 1972 Const., VI, 7
Open meetings of public agencies
legislative intent, 82-3401
meetings to be open, exceptions, 82-3402
minutes to be available for public inspection, 82-3403
Procedure before state agencies, 82-4201 to 82-4225—See ADMINISTRATIVE PROCEDURE
Reorganization of executive branch, 1889 Const., VII, 21; 1972 Const., VI, 7; Title 82A—See REORGANIZATION OF STATE GOVERNMENT
Service of process on state boards or agencies, M. R. Civ. P., Rule 4 D(2)(h)
Single executive to head each department, 1972 Const., VI, 8
Temporary commissions, 1972 Const., VI, 7

STATE ENGINEER
Funds and appropriations transferred to water conservation board, 89-103.6
Powers transferred to water conservation board, 89-103.4
Records and property transferred to water conservation board, 89-103.5

STATE ENTOMOLOGIST
Abolition of position and transfer of functions, 82A-502
Appointment and qualifications, 82-804.1

STATE ENTOMOLOGIST (Continued)
Biennial report required, contents, 82-804.3
Duties, 82-804.2
Expenses, appropriations for, payment, 82-804.4

STATE EXAMINER
Banks, investment companies and trust companies, fee for examination, 5-908
Biennial report to governor, 82-1002
Building and loan associations, fee for examination, 5-909
Cities and towns, reimbursement of examination costs, 82-1002
Claims against state, assignment of, duties of state auditor, 83-901 to 83-904
Counties, reimbursement of examination costs, 82-1002
Department of business regulation, examiner as head, 82A-401
  functions transferred to department, 82A-403
Irrigation districts
  examination of books and records, costs, 89-2107
  joint operations, examination by state examiner, 89-1215
Political subdivision functions transferred to department of intergovernmental relations, 82A-903
Salary and reimbursement of expenses, 82-1011
School districts, examination of, 82-1008
Special examinations, fee, 5-910
Vehicle equipment safety commission accounts, inspection by examiner, 32-21-174

STATE INSTITUTIONS
Advisory committees for institutions, appointment by warden or superintendent, 80-1406
Alcoholic beverages, furnishing to inmates as misdemeanor, penalty, 80-1418
  abolition, 82A-807
Agricultural programs for treatment or rehabilitation, 80-1405
Boulder river school and hospital, 80-2303 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Budget requests, review and approval by board, 80-1405
Center for the aged, 80-2501 to 80-2503—See CENTER FOR THE AGED
Children's center, 80-2101 to 80-2107—See CHILDREN'S CENTER
Cost of support of residents
  action for collection of costs, 80-1604
  definition of terms, 80-1602
  deposit of receipts in state treasury, 80-1603
  financial ability of resident or responsible person, investigation, 80-1603
  foster home and group home care included, 80-1601
  institutions subject to per diem charge, enumeration, 80-1601
  investigation to determine per diem, 80-1603
  lien of judgment or claim on property of responsible person, 80-1604
  monthly assessment of charges against resident or responsible person, 80-1603
  rate of per diem, annual recomputation, 80-1603
Department of institutions
  board of institutions, qualifications and appointment, 80-1407
    compensation and reimbursement of board members, 80-1408
    continuation in advisory and quasi-judicial function, 82A-806
    function of board in general, 80-1409
    meetings of board, 80-1409
    officers of board, 80-1408
    quorum of board, 80-1409
    report to governor, 80-1405
    transfer of functions to other departments, 82A-803
  council of superintendents, 80-1406
    abolition of council, 82A-807
  definition of terms, 80-1402
  director, qualifications, appointment and duties, 80-1404
  division of mental hygiene
    powers and duties of division, 80-2403
    state hospital in division, 80-2401
    supervisor of division, 80-2402

References are to Title and Section numbers

STATE INSTITUTIONS (Continued)
Department of institutions (Continued)
division of mental retardation, 80-2601 to 80-2610—See MENTAL RETARDATION, Division
employees of department, appointment, 80-1404
institutions subject to control by department enumerated, 80-1403
juvenile correctional facilities, establishment, control and management, 80-1410 to 80-1412—See Juvenile facilities, below
powers and duties of board in general, 80-1405
purpose of department, 80-1401
reorganization of department, 82A-801 to 82A-807—See REORGANIZATION OF STATE GOVERNMENT, Department of institutions
criminal investigation functions transferred to department of law enforcement, 82A-1202
motor vehicle functions transferred to department of law enforcement, 82A-1205
reports of board to governor and legislative assembly, 80-1405
superintendents and wardens, appointment by board, 80-1405
duties of warden and superintendents, 80-1406
Drugs, furnishing to inmates as misdemeanor, penalty, 80-1418
Employment of personnel at institutions, 80-1406
Establishment as public good may require, 1972 Const., XII, 3
Galen state hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL
Industrial activities permitted, 80-1501
contract labor arrangements prohibited, 80-1503
exchange of products with other states prohibited, 80-1503
payments to prison inmates permitted, 80-1501
public sale of products prohibited, 80-1503
receipts from sale of goods, disposition, 80-1502
Juvenile facilities
absentee from facilities, apprehension and return, 80-2211
penalty for aiding residents to leave facility, 80-2212
aftercare division and agreements, 80-1414 to 80-1416
age of child for commitment, 80-2204
control and management of correctional centers, 80-1411
curriculum of instruction, standards and subjects included, 80-2203
definition, 80-2211
establishment by department, 80-1410
expense of commitment and transportation, 80-2206
Galen State Hospital, juvenile reception and evaluation center, 80-1704
industrial activities permitted, 80-1501 to 80-1503—See Industrial activities permitted, above
institutions in department, 80-1403
medical examination before commitment, 80-2205
physical education building at Pine Hills School, construction and retirement of bonds, 80-2207
prison sentence, commutation to commitment to department of institutions, 80-2210
records and reports to accompany child committed, 80-2205
special programs, 80-1411
superintendents to manage facilities, 80-2202
support and maintenance costs at Pine Hills School, payment by county or federal government, 80-2207
transfer of child from children's center, 80-2105
transfer to juvenile facility from state prison, 80-2210
transfer to other facilities or institutions, 80-2209
transportation to school, 80-2206
university aid to residents, 80-2213
youth forest camp, work program, 80-1412
Lands for use of institutions, lease or purchase, 80-1405
Legislative consent required to move, discontinue or abandon institution, 80-1403
Legislative proposals for long-range programs, 80-1405
Mental health centers in Miles City and Glasgow, staffing, supervision by board of institutions, 80-2410, 80-2411
Mental health programs controlled through division of mental hygiene, 80-2405—See INSANE AND MENTALLY ILL, Division of mental hygiene

References are to Title and Section numbers

STATE INSTITUTIONS (Continued)
Mental retardation center at Glendive, 80-2310 to 80-2312
Prison, 80-1901 to 80-1908—See PRISONS AND PRISONERS, State prison
Pulmonary disease hospital, 80-1701 to 80-1704—See GALEN STATE HOSPITAL
Removal of inmate without authority as misdemeanor, penalty, 80-1417
Reports to governor, 1972 Const., VI, 15
Research programs, participation by governing boards of institutions, 80-1413
Rights of persons committed, 1972 Const., XII, 3
Rules and regulations for government of institutions, 80-1405
State hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL
State training school and hospital, 80-2303 to 80-2312—See BOULDER RIVER SCHOOL AND HOSPITAL
Superintendents and warden, appointment and discharge, 80-1404
powers and duties in general, 80-1406
Tax exemption, 1972 Const., VIII, 5
University facilities, utilization by institutions, 80-1405
Veterans' home, 80-1801 to 80-1804—See VETERANS, Home for veterans
Warm Springs state hospital, 80-2401 to 80-2411—See WARM SPRINGS STATE HOSPITAL

STATE LANDS
Beds of lakes and streams, proceedings by board to determine title, 81-2305
Board of land commissioners, composition, authority, 1972 Const., X, 4
Brush disposal on state lands, 81-1601
Classification of state lands, records, contents, 81-302
board to classify lands, 1972 Const., X, 11
Definition of terms relating to, 81-102
Department of state lands created, 82A-1101
board created, 1972 Const., X, 4
forestry on state lands subject to control by board, 82A-1505
investment functions transferred, 82A-205
commissioner's position created, appointment, 82A-1104
functions of department, 82A-1101.1
head of department, 82A-1101
powers and duties, 81-105
Development of resources, 81-2401 to 81-2408—See Resource development, below
Disposition of public lands, restrictions on, 1972 Const., X, 11
Equalization payments to counties
claim for payments filed by department, 81-1118
computation of payments to counties, 81-1116
county distribution of payments, 81-1120
form for computing payment completed by department in each county, 81-1117
examination by department, 81-1118
school district use of payments, 81-1121
statement transmitted to department of revenue in each county, 81-1115
warrant for payment to counties, 81-1119
Errors in deeds and conveyances, correction by board, 81-106
Exchange of lands with United States and counties, rights of current users, 81-304
Exchange of public lands, when authorized, 1972 Const., X, 11
Farm mortgage lands, title vested in state and transferees, 75-7302
Federal installations and facilities donated, acceptance by board of examiners, 81-1101.1
Fees chargeable by department, 81-108
Forests
conservation appropriations and allotments, receipt by state treasurer, 81-1410
sale of timber from state forests, supervision and scaling by state forester, 81-1408
Grazing lands, periodical appraisal and re-examination, 81-404
Historic and prehistoric sites and objects on state lands, preservation, 81-2501 to 81-2514—See HISTORIC AND PREHISTORIC STRUCTURES
Lands granted by United States, selection and location by department, 81-301
Lease for coal mining, maximum term and exchange for longer term, 81-502
Leases of agricultural and grazing lands and city and town lots
agricultural use of land leased for grazing, 81-414
animal-unit-month formula for rental on grazing land, 81-433

References are to Title and Section numbers

STATE LANDS (Continued)
Leases of agricultural and grazing lands and city and town lots (Continued)
appeal to board from cancellation, 81-422
appraisal of lands, frequency, 81-401
assignment of lease, filing with and approval of department, preferences, fee, 81-419
bids and applications to be in writing and sealed, 81-405
cancellation of lease, grounds and procedure, 81-422
crop share rental basis for leasing of agricultural lands, 81-402
deposit required with bid, retention, return or forfeiture, 81-436
duration of leases, 81-407
improvements, sale by lessee to successor, arbitration, 81-421, 81-421.1
inspection of land to determine best possible use, 81-413
notice of expiration or cancellation of lease, 81-407
policy of state as to leasing of lands, 81-401
qualifications of lessee, 81-407
renewal of lease, preference of lessee, 81-405
rent to be charged in lease, 81-402
sale of land, right reserved by state in lease, 81-402
withdrawal of land from leasing, 81-405
Leases of mineral lands, authority, 81-701
Lease with option to purchase, taxability of land, 84-204
valuation and assessment of land, 84-205
Mining lease, form of application for, 81-606
Money paid state by mistake to be refunded, 81-107
Multiple-use management concept, 81-103
Oil and gas leases
authority for lease, 81-1701
payment of royalties to state, 81-1705
reports of lessees to department, 81-1705
royalties payable under lease, 81-1704
rules and regulations, adoption and publication, 81-1707
surface rights reserved, 81-1701
waste, provisions for prevention, 81-1701
Prospecting permits, issuance, scope, fee, application for mineral lease, 81-601.1
Public school fund, lands included in, 1972 Const., X, 2
Report of moneys received by state treasurer, 81-1122
Resource development
account in earmarked revenue fund, creation, purposes, 81-2403
deduction from income, maximum percentage, crediting deductions, 81-2405, 81-2406
investment of moneys in account, 81-2407
restriction on use of funds, 81-2404
definition of terms, 81-2402
policy of state, 81-2401
rules and regulations adopted by board, 81-2408
Sale of lands
amounts purchased by one person, 81-908
forfeiture for failure to pay for lands purchased, 81-912
improvements by lessee, settlement for, 81-919
mineral reservations required, 81-902
notice of sale, publication, 81-910
payment terms, 81-915
preference to lessee, 81-912
price for which sold, 81-912
proceeds of sale, funds to which credited, 81-912
public auction, where held, 81-909
qualifications of purchasers, 81-908
shoreline lands reserved from sale, 81-903
taxability of property held under contract of sale, 84-204
valuation and assessment of property, 84-205
Timber sales from state lands in general, prices and terms, 81-1601
Trust status of public lands, 1972 Const., X, 11
United States, restrictions on disposition of land grant from, 1972 Const., X, 11

References are to Title and Section numbers

STATE OF MONTANA
Action authorized for use or benefit of another, M. R. Civ. P., Rule 17(a)
Bluebunch wheat grass as official grass of state, 19-124
Claims against state, assignment of, duties of state auditor, 83-901 to 83-904
Contract actions against state, law not modified by Uniform Commercial Code, 87A-10-103
Criminal jurisdiction, 95-304
Employees
group insurance for employees authorized, 11-1024
minimum hours of salaried personnel, 59-510(1)
Flathead Indian country, criminal jurisdiction
county commissioner's consent required for assumption of jurisdiction, 83-802
customs and culture of Indians to be preserved, 83-805
date of assumption of jurisdiction, 83-803
obligation of state to assume jurisdiction, 83-801
proclamation of governor assuming jurisdiction, 83-802
resolution of tribes requesting state jurisdiction, 83-802
rights, privileges, and immunities of Indians preserved, 83-804
withdrawal of tribal consent to state jurisdiction, 83-806
Limitation of actions and defenses relating to bond issues, 93-2612
Public participation in governmental processes
examination of government documents or observation of deliberation of public bodies, exception, 1972 Const., II, 9
legislative sessions and meetings open to public, 1972 Const., V, 10
participation by people in decision making process of state and local government, 1972 Const., II, 8
Sapphire and Montana agate as official state gem stones, 19-123
Service of process on state or state agencies, M. R. Civ. P., Rule 4 D(2)(h)
Sovereign immunity abolished, 1972 Const., II, 18
Sovereignty of state, 1972 Const., II, 2
Territorial jurisdiction
Blackfeet highway, reassumption of jurisdiction, 83-104.1
migratory bird reservations, consent to acquisition by United States, 83-113
Tort actions against
act not to affect actions arising under workmen's compensation act, 83-707
appeals
bond not to be required of state, 83-703
right of, 83-703
bonds not to be required of state, 83-703
compromise and settlement, power, 83-704
immunity abolished, 1972 Const., II, 18; 83-706.1
judgment as obligation of state, 83-705
jurisdiction of district courts, 83-701
procedure and practice, 83-702
service of process upon attorney general, 83-704
state not to be liable for interest prior to judgment nor for punitive damages, 83-701
Tort claims against governmental entities, comprehensive insurance plan authorized, 82-4303, 82-4306
actions in district court for enforcement of claims, 82-4316
district court jurisdiction, applicable procedural rules, 82-4320
limitation of actions, 82-4317
process, service on state, 82-4322
punitive damages, attorney's fees or interest not recoverable, 82-4324
recovery against governmental entity as bar to action against employee, 82-4323
venue, 82-4321
administration and procurement of insurance by department of administration, 82-4303
apportionment of insurance costs among participants, 82-4305
attachment or execution for collection of claim prohibited, 82-4327
claims administration under act, 82-4311 to 82-4319
approval or denial of claim, notice, 82-4315
compromise or settlement of claim, 82-4319
contents of claim, 82-4313

References are to Title and Section numbers

STATE OF MONTANA (Continued)
Tort claims against governmental entities (Continued)
claims administration under act (Continued)
inaccuracies in claim, effect, 82-4313
incapacitated, minor or absent claimant, filing by agent authorized, 82-4313
late claims disallowed, 82-4314
time and place of filing claim, 82-4311, 82-4312
deductible insurance plan authorized, limits of deductible amounts, 82-4303
reserve authorized, method of accumulation, 82-4305
definition of terms, 82-4302
"governmental entity" defined, 82-4302
limits of coverage, 82-4307
payment of claim or judgment in absence of insurance coverage, 82-4325, 82-4326
instrumentality of state, 82-4325
political subdivision, 82-4326
plan exclusive, departments, agencies and entities to comply, 82-4304
policy conditions construed as in compliance with act, certain standard and customary exclusions excepted, 82-4308
political subdivisions authorized to procure insurance under plan, 82-4306
tax levy for payment of premiums authorized, 82-4309
risks authorized to be insured, 82-4303
title of law, 82-4301
tort liability of governmental entities, 82-4310
Veterans administration center, state jurisdiction accepted, 83-114
War
continuity in government, 1889 Const., V, 46; 1972 Const., III, 2; 82-3801 to 82-3809—See WAR, Continuity in government
post-attack resource management, 77-1501 to 77-1508—See WAR, Resource management

STATE ORPHANS' HOME
See CHILDREN'S CENTER, 80-2101 to 80-2107

STATE PLANNING BOARD
State planning board abolished, transfer of records, property and moneys to planning and economic development commission, 82-3709

STATE PUBLICATIONS DISTRIBUTION CENTER
See LIBRARIES, State publications distribution center, 44-132 to 44-139

STATE PURCHASING DEPARTMENT AND AGENT
Abolition of office and transfer of functions, 82A-202
Contractors—See PUBLIC CONTRACTORS
licenses, 84-3501 et seq.
preference to Montana bidders, 82-1924 to 82-1926
Contracts
duration limited, exception, 82-1918
rental contracts with option to purchase building authorized, 82-1918
Duties of purchasing agent in general, 82-1902
Emergency purchases by departments, 82-1919
Estimates by departments, approval and authority to purchase, 82-1904
Fresh fruits and vegetables, purchase, 82-1919
Institutions and departments, exclusive power to purchase for, 82-1906
Legislative assembly, supplies and services for, 82-1909
Payment for purchases, 82-1905
Printing and publications, 82-1916
Requisitions by departments, approval and authority to purchase, 82-1904
Warehouses, lease, construction and maintenance, 82-1903

STATE RECORDS
Committee abolished, 82-3322
Department of administration management program, 82-3311
definition of "records," 82-3312
destruction of records, procedure for authorization, 82-3313
library and museum material excluded from program, 82-3312

References are to Title and Section numbers

STATE RECORDS (Continued)
Microfilm division of historical society, creation and functions, 82-3205
Preservation of noncurrent records of permanent value, 82-3207
state archives and archivist, 82-3208, 82-3209
Tax records, destruction authorized by board of equalization, 84-724

STATE TRAINING SCHOOL AND HOSPITAL
See BOULDER RIVER SCHOOL AND HOSPITAL, 80-2303 to 80-2312

STATE TREASURER
Administrative functions transferred to department of administration, exceptions, 82A-214
Custodian of moneys and securities of state, 79-201
Deposit of funds with treasurer by state agencies, 79-306
Deposit of public funds in solvent banks, security required, immunity from liability, 79-301
eligible securities, 79-307
Duties in general, 79-201
Funds in treasury
accounts within funds, creation and abolition by controller, 79-413
clearing and suspense accounts authorized, 79-412
disbursements from funds, appropriations, general laws or contracts authorizing, 79-415
enumeration and description of funds, 79-410
future laws or contracts requiring segregation of moneys, interpretation, 79-411
investment funds authorized under unified plan, 79-412
previous definitions of funds superseded, 79-411
purpose of act, 79-409
records of funds and accounts maintained by treasurer and controller, 79-414
short title of act, 79-409
special funds abolished and transferred to general fund, 79-416
state payroll revolving account, 25-507.8
temporary loans from one account to another, 79-414
general fund, loans to, 79-415
Gas and oil royalties from federal government, deposit in highway account, 79-211
Insurance department examinations revolving fund, establishment, 40-2717
Investment department examinations revolving fund, establishment and use, 15-2024
Refund of moneys paid into treasury through error, 79-415
Repurchase agreements and mortgages, custody and control by receipt of confirmation of purchase, 79-201
Salary, 25-501
Securities placed in safekeeping with banks, receipt in lieu of actual securities authorized, 79-201
Treasurer of all state agencies, 79-306
Unclaimed bank funds, deposit in general fund, 5-1117
Warrants required for payment of all money, 79-202

STATE WATER CONSERVATION BOARD
Name changed to Montana Water Resources Board, 89-103—See WATER RESOURCES BOARD

STATUTE OF FRAUDS
Affirmative defense, M. R. Civ. P., Rule 8(c)
Agreement not to be performed within year, 13-606, 93-1401-7
Answer for default of another, promise to, 13-606, 93-1401-7
Investment securities, contract for sale, 87A-8-319
Marriage as consideration for agreement, 13-606, 93-1401-7
Personal property other than goods and securities, contract for sale, 87A-1-206
Real property agency contract, 13-606
Real property sale or lease, 13-606, 93-1401-7
Sale of goods, 87A-2-201

STERILIZATION LAW, VOLUNTARY
Applicability, 69-6401

STERILIZATION LAW, VOLUNTARY (Continued)
Board of eugenics, 69-6402
transfer of board to department of institutions, 82A-805
Liability, 69-6405
Showing prerequisite to approval, 69-6403, 69-6404

STOLEN PROPERTY
Vehicles used in transporting stolen livestock, forfeiture to state, 94-35-204, redes. 46-3005
Venue of prosecution, 95-408

STREET RAILROADS
Financing statements of railroads, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

STREETS
Alley approaches, construction or replacement without special improvement district, 11-2226.1
Sidewalks, curbs and gutters, construction without special improvement district, 11-2226
Special fuel dealers and users license tax, disposition of funds, 84-1840
Underground facility information to be sought before excavating in street, 32-4802
architects and engineers to obtain information, 32-4808
damage to facilities from failure to obtain information, liability, 32-4804
damage to facilities from negligence notwithstanding information, 32-4805
definition of terms, 32-4801
emergency repairs, exemption for, 32-4807
filing of notice as to where information obtainable, 32-4803
immunity if information not given, 32-4806
procedure for seeking information, 32-4803
time allowed for providing information, 32-4803

STRIP COAL MINES
Conservation and prevention of waste of strippable coal, 50-1401 to 50-1408—See MINES AND MINING, Conservation and prevention of waste of strippable coal
Eminent domain not available, 93-9902
License tax provisions, 84-1302 to 84-1304
Regulation, 50-1034 to 50-1057—See MINES AND MINING, Strip mining regulation

SUBDIVISIONS
Sanitary restrictions as to water supply and sewage disposal, 69-5003
definition of "subdivision," 69-5002
plat not accepted unless in compliance, 69-5004
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

SUBPOENAS
Coroner's inquest, subpoena of witnesses, compelling attendance, 95-805, 95-806
Criminal procedure, issuance, requirements and form, 95-1801
discovery, subpoena as discovery device, 95-1803
District court subpoena requiring attendance or production of evidence, M. R. Civ. P., Rule 45(a), (b)
Grand jury, issuance of subpoenas, 95-1407
State agency conducting administrative proceedings, power of subpoena, 82-4220

SUFFRAGE
See ELECTIONS
Right of suffrage, 1972 Const., II, 13

SUICIDE
Descent of property as in cases of natural death, 1972 Const., II, 30

SUMMONS
Amendment of summons, when permitted, M. R. Civ. P., Rule 4 D(7)

SUMMONS (Continued)
Criminal cases, definition, issuance, form and service, failure to appear, 95-601, 95-612, 95-613
Dismissal for failure to issue or serve summons, M. R. Civ. P., Rule 41(e)
Form and signature of summons, M. R. Civ. P., Rule 4 C(2)
Forms suggested by rules, M. R. Civ. P., Appendix of Forms, Forms 1, 18
Issuance by clerk, M. R. Civ. P., Rule 4 C(1)
Justices' courts, service of summons, 93-6711
Service with complaint, M. R. Civ. P., Rule 4 D(2)

SUPERINTENDENT OF PUBLIC INSTRUCTION
Appeal to superintendent from county agencies, 75-5709
Assistant superintendents, employment, 75-5705
Board of land commissioners, member of, 1972 Const., X, 4
Board of public education, ex officio nonvoting member, 1972 Const., X, 9; 75-5610
Board of regents, ex officio nonvoting member, 1972 Const., X, 9; 75-5610
Books and educational aids, preservation, 75-5706
Candidacy for public office during term authorized, 1972 Const., VI, 5
County superintendents, assistance to and meetings with, 75-5706
Definition of term used throughout title, 75-5701
Election, 1972 Const., VI, 2; 59-203, 75-5702
Elementary supervisor, employment, 75-5705
Employment of personnel, 75-5704, 75-5705
Executive branch, member of, 1972 Const., VI, 1
Forms, printing and distribution, 75-5706
High school supervisor, employment, 75-5705
Impeachment, subject to, 1972 Const., V, 13
Inability to discharge powers and duties of office, declaration of vacancy, procedure, 59-609
Laws of state, printing and publication, 75-5706
Media supervisor, employment, 75-5705
Music supervisor, employment, 75-5705
Oath of office, 1972 Const., III, 3; 75-5703
  time of taking oath, 75-8304
Other government employment prohibited during term, 1972 Const., VI, 5
Physical education supervisor, employment, 75-5704
Powers and duties, 1972 Const., VI, 4; 75-5707
Qualifications, 1972 Const., IV, 4, VI, 3; 75-5702
Records of office, preservation, 75-5706
Report to governor, 75-5706
Residence at seat of government, 1972 Const., VI, 1
Salary, 1972 Const., VI, 5; 25-501
Sale of goods or services to school district as misdemeanor, penalty, 75-8303
Seal of office, 75-5706
Secretary to board of public education, 75-5612
Special education supervisor, employment, 75-5704
State equalization aid to schools, duties, 75-6918, 75-6921
Television program, duties with respect to, 75-5710
  advisory committee on educational television, 75-5711
Term of office, 1972 Const., VI, 1; 75-5703
Transportation supervisor, employment, 75-5705
Vacancy in office, how filled, 1972 Const., VI, 6; 75-5703
Vocational education staff, employment, 75-5704

SUPPORT
Reciprocal enforcement
  citation of act, 93-2601-82
  civil enforcement
    appeals in the public interest to be taken by attorney general, 93-2601-74
    arrest of obligor to prevent fleeing jurisdiction, 93-2601-56
    bond or cash deposit required by responding state, 93-2601-66
    communications between husband and wife not privileged, 93-2601-62
    conflict of laws determined by state in which obligor present, 93-2601-47
    contempt proceedings by responding court, 93-2601-66

SUPPORT (Continued)
Reciprocal enforcement (Continued)
civil enforcement (Continued)
continuance, when granted to permit adducing of evidence, 93-2601-60
cost and fees, 93-2601-55
counties within state, application of procedure between, 93-2601-73
credit of payment under responding court order against other support orders, 93-2601-71
diligent prosecution required in responding state, 93-2601-58
enforcement of duties of support, proceedings for, 93-2601-49
evidence, rules governing, 93-2601-63
immunity of obligor from criminal prosecution based on required answers, 93-2601-61
initiating court, duty of, 93-2601-54
jurisdiction of parties restricted to support proceedings, 93-2601-72
minor obligee, legal custodian may file petition in behalf of, 93-2601-53
officials to represent obligee, 93-2601-52
order of support by responding court, 93-2601-64
transmission of order to initiating court, 93-2601-65
transmission of order to other counties in state, 93-2601-64
paternity, adjudication of, 93-2601-67
pending actions do not stay support proceedings, 93-2601-70
periodic payments required by responding court, 93-2601-66
petition for support, contents, filing and venue, 93-2601-51
receipt and disbursement of payments by initiating court, 93-2601-69
remedies of state or political subdivision furnishing support, 93-2601-48
state information agency, duties of, 93-2601-57
statement of payments, transmittal to initiating court, 93-2601-68
support pendente lite, 93-2601-70
tracing of obligor and property, duties of prosecuting attorney in responding state, 93-2601-59
transmission of payments to initiating court, 93-2601-68
criminal enforcement
interstate rendition, 93-2601-45
conditions of interstate rendition, 93-2601-46
definitions, 93-2601-42
presence of obligee in state not required for duty, 93-2601-6
purposes of act, 93-2601-41
registration of foreign support orders
additional remedies, 93-2601-75
clerk to maintain registry of orders, 93-2601-77
enforcement of registered foreign order, 93-2601-80
filing necessary to register, 93-2601-79
notice of registration to obligor, 93-2601-79
prosecuting attorney to represent obligee, 93-2601-78
registered foreign order treated like order of state, 93-2601-80
registration by obligee authorized, 93-2601-76
uniformity of interpretation of acts, 93-2601-81

SUPREME COURT
Appointment of commission to prepare rules of civil procedure for adoption, 93-222
Briefs filed in supreme court
amicus curiae briefs, when permitted, M. R. App. Civ. P., Rule 24
appellant's brief, contents and arrangement, M. R. App. Civ. P., Rule 23(a)
appendices to briefs, when filed, M. R. App. Civ. P., Rule 25(a)
arrangement of appendix, M. R. App. Civ. P., Rule 25(c)
contents of appendix, M. R. App. Civ. P., Rule 25(b)
costs allowed for briefs, M. R. App. Civ. P., Rule 23(g)
cross-appeals, briefs in cases involving, M. R. App. Civ. P., Rule 23(h)
dismissal of appeal on failure to file brief, M. R. App. Civ. P., Rule 26(c)
exhibits, reproduction in separate volume, M. R. App. Civ. P., Rule 25(d)
length of briefs, M. R. App. Civ. P., Rule 23(g)
number of copies filed and served, M. R. App. Civ. P., Rule 26(b)
parties, references to in briefs, M. R. App. Civ. P., Rule 23(d)
record, references to in briefs, M. R. App. Civ. P., Rule 23(e)

References are to Title and Section numbers

SUPREME COURT (Continued)
Briefs filed in supreme court (Continued)
reply brief, contents, M. R. App. Civ. P., Rule 23(c)
respondent's brief, contents, M. R. App. Civ. P., Rule 23(b)
statutes, rules and regulations, reproduction in briefs, M. R. App. Civ. P., Rule 23(f)
time for filing briefs, M. R. App. Civ. P., Rule 26(a)
title of case, statement on cover and first page, M. R. App. Civ. P., Rule 27(c)
typewritten briefs, format, M. R. App. Civ. P., Rule 27(b)
typographical form of briefs, M. R. App. Civ. P., Rule 27(a)
Building, construction of
architects and engineers, employment authorized, 78-1202
bonds, indentures and notes, 78-1205 to 78-1208
borrowing authorized, 78-1203, 78-1204
budget act inapplicable, 78-1209
Calendar, placement of causes on, M. R. App. Civ. P., Rule 39(a)
advancement of causes having precedence, M. R. App. Civ. P., Rule 39(c)
setting causes for argument, M. R. App. Civ. P., Rule 39(b)
Commissions of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
Composition of court, 1972 Const., VII, 3
Criminal law study commission, control over, 94-1001-1 to 94-1001-11—See CRIMINAL LAW STUDY
District judges power of chief justice to assign for temporary service, 1972 Const., VII, 6
Entry and notice of judgments and orders, M. R. App. Civ. P., Rule 30(a)
Fees chargeable by clerk, 82-503
Filing of papers with supreme court, manner of accomplishment, M. R. App. Civ. P., Rule 20(a)
Injunction granted by supreme court on ex parte proceedings, M. R. App. Civ. P., Rule 40
Jurisdiction, 1972 Const., VII, 2
Justices
absence from state forfeits judicial position, 1972 Const., VII, 10
arrest, justices privileged from, 95-616
election, 1972 Const., VII, 8
judicial standards commission, 1972 Const., VII, 11
nominations confirmed by senate, 1972 Const., VII, 8
oath of office, 1972 Const., III, 3
recording oath, M.R.App.Civ.P., Rule 19(a)
political candidacy forfeits judicial position, 1972 Const., VII, 10
practice of law by justices, restrictions on, 1972 Const., VII, 9; 93-902
qualifications of justices, 1972 Const., VII, 9; 93-702
removal and discipline, 1972 Const., VII, 11
salary, 1889 Const., VIII, 29; 1972 Const., VII, 7; 25-501
selection of justices, 1972 Const., VII, 8
solicitation of compensation on account of office prohibited, 1972 Const., VII, 9
substitution of district judge for supreme court justice, 1972 Const., VII, 3
terms of office, 1972 Const., VII, 7
justices in office on effective date of new constitution, 1972 Const., Transition Schedule, Sec. 4
vacancies, how filled, 1972 Const., VII, 8
Minutes of court, approval and attestation, M. R. App. Civ. P., Rule 19(b)
Motions in supreme court, contents and manner of filing, M. R. App. Civ. P., Rule 22
Oaths of justices and clerk, recording, M. R. App. Civ. P., Rule 19(a)
Oral argument before supreme court
agreement of parties to dispense with argument, M. R. App. Civ. P., Rule 29(f)
consolidation of cross and separate appeals for argument, M. R. App. Civ. P., Rule 29(d)
exhibits, use during argument, M. R. App. Civ. P., Rule 29(g)
failure of counsel to appear for argument, M. R. App. Civ. P., Rule 29(e)
notice of time and place of argument, M. R. App. Civ. P., Rule 29(a)
order and content of argument, M. R. App. Civ. P., Rule 29(c)
postponement of argument, request for, M. R. App. Civ. P., Rule 29(a)
time allowed for argument, M. R. App. Civ. P., Rule 29(b)

References are to Title and Section numbers

SUPREME COURT (Continued)
Original proceedings in supreme court
application for writ or order, contents, M. R. App. Civ. P., Rule 17(d)
presentation of application to clerk, M. R. App. Civ. P., Rule 17(c)
time allowed for presentation of application, Rule 17(e)
briefs, contents and filing, M. R. App. Civ. P., Rule 17(g)
circumstances justifying institution of original proceedings, M. R. App. Civ. P., Rule 17(a)
constitutional questions raised, notice to attorney general, M. R. App. Civ. P., Rule 38
costs taxed by court, M. R. App. Civ. P., Rule 33(d)
briefs and appendices, restriction on costs, M. R. App. Civ. P., Rule 33(b)
notation of costs by clerk, M. R. App. Civ. P., Rule 33(f)
unnecessary costs not recovered, M. R. App. Civ. P., Rule 33(e)
decision, notice to parties, M. R. App. Civ. P., Rule 35(a)
hearing on application, M. R. App. Civ. P., Rule 17(h)
parties to proceedings, designation, M. R. App. Civ. P., Rule 1
public officer as party to proceeding, M. R. App. Civ. P., Rule 37(c)
substitution of parties for death or other cause, M. R. App. Civ. P., Rule 37
preliminary action by supreme court on application, M. R. App. Civ. P., Rule 17(f)
rehearing, grounds and time for filing of petition, M. R. App. Civ. P., Rule 34
Rules of Appellate Civil Procedure
application of rules and statutes, M. R. Civ. P., Rule 72
citation of rules, M. R. App. Civ. P., Rule 43(a)
effective date of rules, M. R. App. Civ. P., Rule 43(b)
exemption of statutory proceedings from rules, M. R. App. Civ. P., Rule 42(a)
pending proceedings, application of rules to, M. R. App. Civ. P., Rule 43(b)
scope of rules, M. R. App. Civ. P., Rule 1
statutes superseded by rules, M. R. App. Civ. P., Rules 42(c), 43(c)
suspension of rules by supreme court, M. R. App. Civ. P., Rule 3
statutory provisions, application to proceedings, M. R. Civ. P., Rule 72, M. R. App. Civ. P., Rule 17(b)
voluntary dismissal of proceeding, M. R. App. Civ. P., Rule 36
Practice of law by justices, restrictions on, 93-902
Prehearing conference to simplify issues before court, M. R. App. Civ. P., Rule 28
Process extends to all parts of state, 1972 Const., VII, 2
Removal of papers from clerk's office, restrictions, M. R. App. Civ. P., Rule 39(d)
Reports of decisions, call for public bidding authorized, 82-2002
Retired justice, call for duty, 93-1130
Retirement system for justices, 93-1107 to 93-1132—See JUDGES, Retirement system
Review division for review of certain criminal sentences, 95-2501
Rule-making power, 1972 Const., VII, 2
Rules of civil procedure, power to prescribe, 93-2801-1 to 93-2801-8—See CIVIL PROCEDURE
Rules of criminal procedure, adoption, 95-103 to 95-108—See CRIMINAL PROCEDURE, Supreme court rules
Salary of chief justice and justices, 25-501
Service of papers filed in supreme court required on all parties, M. R. App. Civ. P., Rule 20(b)
personal service or mail, M. R. App. Civ. P., Rule 20(c)
proof of service, M. R. App. Civ. P., Rule 20(d)
Supervisory control over other courts, 1972 Const., VII, 2
Time allowed for proceedings in supreme court
computation of days, M. R. App. Civ. P., Rule 21(a)
extension of time allowed by court, M. R. App. Civ. P., Rule 21(b)
mail service, additional time allowed after, M. R. App. Civ. P., Rule 21(c)
United States Supreme Court, action on receipt of mandate from, M. R. App. Civ. P. Rule 35(c)
Vesting of judicial power in supreme court, 1972 Const., VII, 1

SURPLUS PROPERTY
Financing of state agency, 82-3104

SWIMMING POOLS AND BATHING AREAS
Definition of terms, 69-5502
Enforcement powers of state and local officers, 69-5505
Inspections by state and local health officials, 69-5505
publication of reports of inspections, 69-5506
Nuisance, violation of chapter or rules as, 69-5510
abatement of nuisance, 69-5505
Penalty for violations, 69-5511
Plans for construction submitted to state department, 69-5507
Policy of state, 69-5501
Records and data furnished to state department, 69-5508
Rules for sanitation adopted by state board, 69-5503
Standards for sanitation and safety, 69-5509
Supervision of sanitation by state board, 69-5504

SYPHILIS
See VENEREAL DISEASE, 69-4601 to 69-4617

T

TAXATION
Agricultural commodities, levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
Agricultural lands, classification and assessment, 84-437.1 to 84-437.14
agricultural use only considered in valuation, 84-437.3
application for valuation as agricultural land, formal requirements, 84-437.7
continuation of valuation until change of use, 84-437.8
transfer of ownership ineffective to change classification, 84-437.8
eligibility of land for agricultural purpose valuation, 84-437.2
factual details to be shown on assessment list, 84-437.12
improvements and facilities, area covered by as agricultural land, 84-437.6
legislative intent, 84-437.1
roll-back tax assessed upon change in use of land, computation, 84-437.4
eminent domain, tax not applicable to land taken by, 84-437.10
liability to attach upon change in use, 84-437.8
part of tract, change in use on, 84-437.9
procedures for assessment, 84-437.5
rules and regulations, 84-437.13
tract in two or more counties considered on basis of total area, 84-437.11
violation as misdemeanor, 84-437.14
Airline flight property tax, hearing before state tax appeal board, 84-6405
Air pollution equipment and facilities, classification for tax purposes, 69-3923
Airport authority taxing power, 1-909
certification of levy, collection and use of revenue, 1-916
county levy for airport purposes, 1-917
Appeal procedures for taxpayer grievances, 1972 Const., VIII, 7
Assessment of property for taxation
agricultural lands, 84-401, 84-437.1 to 84-437.14—See Agricultural lands, above
blank forms prescribed by department, 84-405
county assessors as agents of department, salary, facilities, 84-402
department of revenue, appraisal and equalization duties, 84-402
appeal to state tax appeal board, 84-403
general powers, 84-412
percentage basis to be determined and assigned by department, 84-404
equal valuation used throughout state, 1972 Const., VIII, 4
farm statistics to be taken by department, 84-449
refusal to furnish or furnishing fraudulent statistics as misdemeanor, penalty, 84-452
return of statistics to commissioner of agriculture, 84-450
source of statistics, 84-451
industrial development projects, 11-4108
irrigation and drainage facilities, 84-206
livestock in feeding pens or enclosures, 84-406

References are to Title and Section numbers

TAXATION (Continued)
Assessment of property for taxation (Continued)
motor vehicles, 53-114, 84-406, 84-6008
refusal of owner to make statement, duties of department, 84-413
state to appraise, assess and equalize valuation of property, 1972 Const., VIII, 3
telegraph, telephone and other utility property, appeal of assessment to state tax appeal board, 84-903.1
time of assessment, 84-406
unit ownership property, assessment against unit owners, 67-2340
rules and regulations for appraisal and assessment, 67-2342
Banks
corporation license tax, application to banks, 84-1501.6, 84-1501.7—See Corporation license tax, below
offices in more than one county, assessment and apportionment of tax, 84-4606
shares of banks, assessment of, 84-307
Barrelage tax on beer, 4-317
proceeds of tax, disposition, 84-1901
Bounty fund levy against livestock, 46-1914
Boxing, sparring and wrestling exhibitions, tax on gross receipts, 82-308
Business trusts, 15-2507
Cattle protective district special levy, 46-2804
Change in assessment of property assessed to any particular person, notice of intention, 84-710
Changes in assessed valuation of classes of property, notice of contemplated action, 84-710
Cigarette tax
amount of levy, 84-5606
appeals, application of rules of civil procedure to, M. R. Civ. P., Rule 81(a), Table A
apportionment of proceeds among funds, 84-5606.30
building program, referendum on pledge of proceeds to, 79-2203
deductibility on federal income tax, 84-5606.1
definitions, 84-5606.2
department of revenue
appeal, 84-5606.25
assistants, employment of, 84-5606.30
hearings, 84-5606.23
investigative powers, 84-5606.23
powers and duties, 84-5606.26
rule-making power, 84-5606.27
suit by department for unpaid tax and costs, treble damages, 84-5606.29
direct tax on retail consumer, 84-5606
disposition of taxes, 84-5606.30
enforcement, duties of county attorneys and peace officers, 84-5606.28
insignia, affixing to package, 84-5606, 84-5606.7
face value recoverable from consumer or user, 84-5606.10
licensed wholesalers and retailers only to affix insignia, 84-5606.11
marking of imported packages required, 84-5606.13
resale of insignia prohibited, 84-5606.14
tax meter machines, 84-5606.13
tax meters, records concerning, 84-5606.17
unused meter settings, 84-5606.14
insignia, purchase of, 84-5606.12
insignia requirements, noncompliance a misdemeanor, 84-5606.18
insignia, time for payment for and affixing of, 84-5606.15
bond, 84-5606.15
interstate carrier's reports, 84-5606.20
misdemeanor penalties, 84-5606.31
nuisance, 84-5606.19
penalty for unpaid tax, 84-5606.16
personnel, employment, 84-5606.28, 84-5606.30
seized cigarettes, inventory of, 84-5606.22
state tax appeal board, appeals to, 84-5606.24

TAXATION (Continued)
Cigarette tax (Continued)
tax meter machines, 84-5606.13
unlawful transportation of cigarettes, 84-5606.21
vending machines, 84-5606.4
War Veterans' Compensation Fund abolished, 84-5606.30
wholesaler's and retailer's licenses, 84-5606.3
department of revenue, appropriation of funds for, 84-5606.6
display, 84-5606.5
fees, 84-5606.5
disposition, 84-5606.6
prohibition against unlicensed activities, 84-5606.8, 84-5606.9
renewal, 84-5606.5
revocation or suspension, 84-5606.8
violations, 84-5606.8, 84-5606.9
Cities and towns
all-purpose annual levy, 84-4701.1 to 84-4701.6
appeal procedures for taxpayer grievances, 1972 Const., VIII, 7
fire department relief association disability and pension fund, 11-1912
flood control indebtedness, 89-3312
police reserves, fund for payment of officers, 11-1823
property exempt from taxation, 1972 Const., VIII, 5
strict accountability for revenue received, 1972 Const., VIII, 12
Classification of property for taxation, 84-301
percentage basis for imposition of taxes, 84-302
Coal mines license tax, 84-1302 to 84-1304
disposition of taxes, 84-1309.1
records required of operators, 84-1305
Collection of personal property tax by county treasurer, 84-4202
Collection of taxes, duty of department, 84-723
Consumer counsel, special tax on revenues of regulated companies for, 1972 Const., XIII, 2
Contractors, license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses
Corporate dissolution, tax clearance certificate, 15-2285
Corporation income tax
administration by department of revenue, 84-6902
employment of personnel, 84-6907
change from license tax applicability, information return, 84-6905
citation of act, 84-6902
copy of return furnished taxpayer, 84-732
corporations subject to tax, 84-6901
federal obligations, exemption of income from, 84-6906
interstate commerce, application of tax to, 84-6903
election of tax on gross sales, rate, limitation, 84-6903
license tax provisions incorporated by reference, 84-6906,
offset for license tax paid, 84-6904
rate of tax, 84-6903
revenue from tax, disposition, 84-6908
rules and regulations, 84-6907
situs of property within state as basis for tax, 84-6903
Corporation license tax
action by attorney general for collection of tax, 84-1505
alternative tax based on gross sales of corporations with income from sources within and without state, 84-1501
amount, 84-1501
assessment of tax, 84-1505
demand for immediate payment, 84-1505.2
building program, portion of tax proceeds pledged to, 79-2203
clearance certificate available to taxpayer, 84-733
disposition of fees collected, 84-734
returns to which act applies, 84-735
computation of tax, basis, 84-1504
"corporation" defined, 84-1501
deductions allowable in computing income, 84-1502

References are to Title and Section numbers

TAXATION (Continued)
Corporation license tax (Continued)
deficiency assessments
appeal to state tax appeal board, 84-1508.1
notice of assessment, mailing to taxpayer, 84-1508.1
protest of deficiency, procedure on, 84-1508.1
time within which assessment must be made, 84-1508.2
disclosure of necessary facts, department requiring, 84-1508
dissolution of corporation, liability for final year's tax, 84-1511
effective dates, 84-1501.7
election by small business corporation not to be subject to tax
definitions, 84-1501.1
dissolution of corporation, agreement by shareholder to assume personal liability required for election, 84-1501.3
effect of election, 84-1501.2
"electing small business corporation" defined, 84-1501.1
limitations upon right to election, 84-1501.2
method of making election, 84-1501.2
minimum fee, 84-1501.5
"small business corporation" defined, 84-1501.1
termination of election, 84-1501.2
validity of election, 84-1501.2
exempt corporations, 84-1501
income tax, corporations subject to, 84-6901
information return filed when corporation becomes subject to income tax, 84-6905
federal income tax return, 84-1517
"fiscal year" defined, 84-1504
"gross income" defined, 84-1504
interest on delinquent payment, 84-1505
levy on and sale of property for payment of tax, 84-1505
"net income" defined, 84-1504
offset for income tax paid, 84-6904
overpayments of tax
disallowance for claim for refund, procedure on, 84-1508.2
interest on overpayments, 84-1508.1
refund or credit to be allowed on overpayment, 84-1508.1
time within which claim for refund or credit must be made, 84-1508.2
public contractors, credit for additional license fees, 84-3514
regulations for enforcement of act, 84-1508
release of lien and discharge of property, 84-1505.1
return, contents and filing, 84-1504
certified copies available to taxpayer, 84-732
disposition of fees collected, 84-734
returns to which act applies, 84-735
failure to file or render information, penalty, 84-1516
reviver of corporation after suspension or forfeiture for failure to pay, 84-1515
state and national banks subject to tax, 84-1501.6
taxable period to conform to federal taxable year, 84-1504
time of payment, 84-1505
violations, penalty, 84-1516
water users' association exempt, 25-110
witnesses, compelling attendance before board, 84-1508
County license taxes, disposition of proceeds, 84-2708
County tax appeal board, terms of members, meetings, equalization duties, per diem and expense, 84-601
County water district taxes—See COUNTY WATER AND SEWER DISTRICTS
Department of revenue, 82A-1801 to 82A-1806—See DEPARTMENT OF REVENUE
corporations transacting business in state, central reporting system to be established, 84-708.2
list of corporations, 84-708.4 to 84-708.8
rules and regulations, 84-708.3
powers and duties, 84-708.1

TAXATION (Continued)
Destruction of tax records authorized, procedure, 84-724
Disaster emergency tax, city-county, 11-4301 to 11-4306—See CITIES AND TOWNS, Disaster emergency tax; COUNTIES, Disaster emergency tax
Equal valuation used throughout state, 1972 Const., VIII, 4
Exemptions
airport authority property and income, 1-920
constitutional provision for exemptions, 1972 Const., VIII, 5
fraternal benefit societies, 40-5343
freeport merchandise, definition, 84-202
game wardens' retirement benefits, 68-1420
irrigation and drainage facilities taxed as like federal and state facilities, 84-206
judges' retirement benefits, 93-1126
nursing homes operated not for profit, 84-202
perishable fruits and vegetables in farm storage, 84-202
teachers' retirement system benefits, 75-6215
unit ownership property, application of exemptions to, 67-2341
urban renewal property held by municipality, 11-3912
Federal tax lien
execution of notices and certificates, 45-1502
fees for filing liens, 45-1504
filing officer, duties, 45-1503
place of filing of notices and certificates, 45-1501
previously filed liens, 45-1507
short title of act, 45-1506
uniformity of interpretation of act, 45-1505
Freeport merchandise, classification for taxation, 84-301
Freight line companies
proceeds of tax, disposition, 84-4825
refund claims, 84-4825
Gasoline distributor's license tax
amount of tax, 84-1847
aviation gasoline, amount of tax, 84-1847
definition of "aviation gasoline" and "aviation dealer," 84-1846
invoice of dealers, 84-1853
refund credit and evaporation allowance not applicable, 84-1849
unlawful use of gasoline as misdemeanor, 84-1855.1
bond of distributors, 84-1857
citation of act, 84-1845
collection of delinquent tax, 84-1858
definitions, 84-1846
delinquent payments and penalty, 84-1858
department to establish rules and regulations, 84-1861
distribution of state highway construction funds
bridge construction and reconstruction on Federal-aid system, special allocations for, 32-2604
districts for apportionment of funds, 32-2603
increase of expenditures in particular districts, 32-2610
interstate highway system, allocation of funds to, 32-2609
matching of federal funds, apportionment for, 32-2605
primary federal-aid system, allocation of funds for, 32-2606
secondary federal-aid system, allocation of funds for, 32-2607
urban federal-aid funds, allocation, 32-2611
invoice to be issued purchaser, 84-1853
license of distributors, 84-1857
revocation for noncompliance with act, 84-1858
lien for unpaid taxes, 84-1858
misdemeanor penalties, 84-1859
payment of tax, 84-1849
proceeds of tax, distribution and use, 32-2601
aeronautics commission, proceeds used for, 1-501
records of distributor
examination, 84-1850
inspection, 84-1852
period for which records to be preserved, 84-1851

TAXATION (Continued)
Gasoline distributor's license tax (Continued)
refund of tax, 84-1855
refund permits, 84-1855
statement of distributor, 84-1849
statements concerning receipt of gasoline, 84-1854
penalty for failure to file, 84-1854
statute of limitations, 84-1860
timely mailing treated as timely filing and paying, 84-1856
House trailers, tax on, 84-6601 to 84-6607—See Mobile homes, below
Imported beer, 4-324
proceeds of tax, disposition, 84-1901
Income tax
adjusted gross income, definition, 84-4905
nonresident taxpayers, exclusions, 84-4907
amounts earned in partnership, 84-4911
certified copies of returns available to taxpayers, 84-732
disposition of fees collected, 84-734
returns to which act applies, 84-735
change of status from that of nonresident to resident, effect, 84-4915
change of status from that of resident to nonresident, effect, 84-4915
computation of amount, 84-4914
corporation income tax, 84-6901 to 84-6908—See Corporation income tax, above
credits for income taxes imposed by foreign states, 84-4937
definitions, 84-4901
delinquent returns and payments, penalties and interest added, 84-4924
dependency exemptions, 84-4910
federally related income excluded from adjusted gross income, 84-4905
federal returns, corrections and amended returns, filing requirements, 84-4938
information agents' duties, 84-4913
jeopardy assessments, 84-4928.1
judicial review of departmental determination, 84-4923.1
lien of tax, release or discharge of property from, 84-4958
limitation on time for determining tax, suspension of running of statute, 84-4920.1
nonresident
ad valorem taxpayers, list, 84-4903.11
alternative tax based on gross sales, 84-4903
amounts withheld as lien against agent, 84-4903.9
amounts withheld considered funds held in trust, 84-4903.9
annual payment of withheld amount, when authorized, 84-4903.5
application to, 84-4903
county assessor, duties regarding, 84-4903.11
deductions restricted to those related to Montana income, 84-4907
exceptions from withholding requirements, 84-4903.3
exclusions from adjusted gross income, 84-4907
failure of agent to withhold or pay over to state, penalty, 84-4903.7
income subject to tax, 84-4903
loans made to nonresidents for grain on which chattel mortgage filed, list, preparation, 84-4903.12
modification of withholding provisions, 84-4903.6
personal and dependency exemptions prorated, 84-4910
quarterly payment by withholding agent, 84-4903.5
rents and royalties, rules requiring withholding on, 84-4903.2
requiring withholding agent to make return and pay tax, power of department, 84-4903.8
rights of nonresident, 84-4903.10
rules and regulations, power of department, 84-4903.13
transmittal of amount of withholding to department, 84-4903.2
withholding agent, 84-4903.4
withholding from payments to, 84-4903.2
withholding of amount of tax, authorized, 84-4903.1
overpayment, credits and refunds, 84-4956
partnership income, 84-4911

TAXATION (Continued)
Income tax (Continued)
penalties for violation of act, 84-4924
personal exemptions, 84-4910
persons moving out of state, 84-4915
persons who must file return and pay tax, 84-4914
public contractors, credit for additional license fees, 84-3514
rate of tax, 84-4902
refund of overpayments, 84-4956
relocation assistance for persons affected by highway department's land acquisitions not income, 32-3930
returns, 84-4914
revision of return, when permitted, 84-4922
appeal to state tax appeal board, 84-4922
status changed from that of resident to nonresident, effect, 84-4915
surtax, 84-4902.1
temporary residents, deductions allowed to, 84-4907
time for payment, 84-4914
withholding, quarterly payment by employer, exception, 84-4946
Income tax surtax, 84-4902.1
Industrial development projects subject to tax, remedies against, 11-4108
Inheritance tax—See INHERITANCE TAX
Insurance premiums tax, 40-2821
fire insurance, 82-1231
independently procured coverage, 40-3427
retaliatory tax provisions, 40-2826
surplus line premiums, 40-3420
penalty for failure to file or pay, 40-3421
Irrigation and drainage facilities, when subject to taxation, 84-206
Judgment, tax operating as, 84-3807
Levy of taxes
all-purpose exclusive levy by cities and towns
abandonment of method in future years, 84-4701.4
allocation of levy to departments of municipality, 84-4701.3
binding effect of election to use all-purpose levy, 84-4701.4
certification of levy to county officers, 84-4701.5
deposit of revenues from facilities in all-purpose general fund, 11-1414
extraordinary levies to pay bonded indebtedness and judgments authorized, 84-4701.6
maximum rate of levy, 84-4701.2
multiple-levy statutes not repealed, 84-4701.1
purpose of act, 84-4701.1
constitutional provision for levies by general laws for public purposes, 1972 Const., VIII, 1
county poor fund levy, 71-222
county tax levy, 16-1015
county tax levy for construction, maintenance and repair of public ferries, 32-1518
elderly persons, local tax levy to support activities of, 71-1701
fire districts in unincorporated areas, levy for, 11-2008
flood control levy by county or municipality, 89-3312
limitation of actions and defenses relating to levy for payment of state and municipal bonds, 93-2612
soil conservation district assessment, 76-209
university system, property tax for, 84-3804
Lien of tax operating as execution, 84-3807
Limitation of actions on claim for refund, 84-726
Liquor license tax proceeds, disposition, 84-1901
Livestock
assessment of stock in feeding pens or enclosures, 84-406
bounty tax levy, 84-5214
levies for disease control and indemnification, predator control, inspection, protection, research and promotion, 1972 Const., XII, 1
maximum rate of tax, 84-5211

TAXATION (Continued)
Livestock (Continued)
proceeds of tax, deposit and use, 84-5212
purposes for which proceeds used, 84-5211
Metalliferous mines
amount of tax, 84-2004
computation of tax, 84-2006
delinquent taxes, penalty, 84-2007
hearing before state tax appeal board, 84-2010
notice of tax, 84-2006
Mining net proceeds tax
assessment roll, 84-5408
classification, 84-301
computation, 84-5403
extension of filing time, 84-5402
lien of tax and penalty, 84-5405
penalty for untimely filing, 84-5402
valuation of net proceeds, transmission to county assessor, 84-5408
Mobile homes
application of act to mobile homes and trailers subject to taxation, 84-6605
assessment of property tax, time of, 84-406
classification for taxation, 84-301
definitions, 84-101, 84-6601
fees in addition to registration and license fees, 32-3305
highway checking of trailers, receipt to be produced, 84-6603
moving of mobile home, declaration of destination required, procedure, 84-6606
penalty for failure to display or produce declaration, sticker or receipt, 84-6604
regulations of department, 84-6607
stickers to show property tax paid, issuance and display required, 84-6602
Motor vehicles
assessment and registration provisions, 53-114, 84-406, 84-6008
interstate fleets
apportionment on basis of in-state miles traveled, 84-727
assessment of property tax by department, 84-727
collection of tax by department, 84-730
cost of vehicle to be included in application for registration, 84-729
deposit and distribution of taxes, 84-731
partial year's tax, 84-727
rate of levy applied to fleet, 84-729
registration of fleet, payment of tax as condition precedent, 84-727
situs of vehicles in state for purposes of taxation, 84-730
valuation of fleet, method of computation, 84-728
Motor vehicles and motor fuels, taxing extends only to vehicles operated on public roads, 32-2124.2
operation across public roads and highways not considered operation on roads, when, 32-2124.1
Multistate Tax Compact, 84-6701 to 84-6704
advisory committee, 84-6704
abolition of committee, 82A-1806
council appointed by board of equalization, 82A-1803
state commissioner, 84-6702
alternate, 84-6703
text of compact, 84-6701
Natural gas tax
assessment of operators and producers to pay expenses of conservation commission, 60-145
collection of tax by county treasurer, 84-6208
computation of tax by county assessor, 84-6208
distributors' license tax, amount, 84-2102
proceeds of tax, disposition, 84-1901
extension of filing time, 84-6202
penalty for untimely filing, 84-6202
withholding of tax from royalties, 84-6208

TAXATION (Continued)
New industrial property, classification, 84-301
Oil and gas producers, failure to file statement of yield, penalty, 84-6202
Oil producers' license tax
  computation of tax, 84-2202
  rate of tax, 84-2202
Power to tax inalienable, 1972 Const., VIII, 2
Privilege tax on tax-exempt property, 84-207 to 84-211
  assessment, collection and distribution, 84-209
  credit on use of federally owned property, 84-208
  delinquent taxes, collection of, 84-210
  exceptions, 84-207
  rate, 84-208
Property tax, levy for support of university system, 84-3804
Protest payment of license fees, procedure after, 84-4501
Public contractors' license tax, 84-3501 et seq.—See PUBLIC CONTRACTORS, Licenses
Public property subject to taxation when subject to sale contract or option to purchase, 84-204
  valuation and assessment of property, 84-205
Railroad assessment, appeal to state tax appeal board, 84-802.1
Rate of tax determined annually by governor, 84-713
Records of taxation, destruction authorized by state board, 84-724
Refund of overpayments, 84-726
Resource indemnity trust account tax, 84-7001 to 84-7013
  account created in trust and legacy fund, 84-7004
    deposit of tax receipts in fund, 84-7008
    expenditures, 84-7009
    investment of fund, 84-7009
    minimum balance to be maintained, 84-7009
    use of fund, purpose, 84-7010
  definition of terms, 84-7003
  gross mineral yield, statement to be filed annually, contents, 84-7005
    confidentiality of information, 84-7013
    failure to file statement, tax determination by department, 84-7012
    "mineral" defined, 84-7003
  legislative policy, 84-7002
  short title, 84-7001
  tax on mineral production to be paid annually, amount, 84-7006
    deposit of tax proceeds, 84-7008
    effective date of tax, 84-7011
    receipt for tax, 84-7008
    time for payment, 84-7007
Retirement benefits, classification, 84-301
Royalty interests, 84-5409
Rural co-operatives tax, functions with respect to transferred to department of revenue, 82A-1802
Sale of property for taxes
  county leased lands, resale, 84-4198
  rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Sewer service rates, collection of current and delinquent charges, 84-4726.1
Sleeping car company's license tax, definition of terms, 84-2301
Snowmobiles, tax-paid decal required, 53-1025
  annual issuance of decal, 53-1026
  application for decal, 53-1025
  definition of terms, 53-1024
  enforcement powers of officers, 53-1028
  penalty for failure to display decal, 53-1027
Special fuel dealers and users
  amount of tax, 84-1832.1
  bond required of dealers and users, 84-1833
  credits allowed, 84-1836, 84-1837
  definition of terms, 84-1831

TAXATION (Continued)
Special fuel dealers and users (Continued)
examination of records, 84-1838
lien of tax on property of dealer or user, 84-1833
proceeds of tax, disposition, 84-1840
railroad grade crossing protection, allocation of funds for, 84-1840.1
returns required, filing date, 84-1835
temporary permits to unlicensed users
fees, 84-1843
issuance of permit, 84-1842
penalty for operation without permit, 84-1844
time of attachment of tax, 84-1832
time of collection, 84-1832.1
Special improvement districts authorized, 1972 Const., VIII, 5
State department of revenue
change in assessed valuation of classes of property, notice and hearing, 84-710
change in assessment of property assessed to a particular person, notice of intention, 84-710
State property subject to taxation when subject to sale contract or option to purchase, 84-204
valuation and assessment of property, 84-205
State tax appeal board created, composition, terms of members, filling of vacancies, 84-701
appeal to board, hearing, reference authorized, record of proceedings, 84-709
continuous session, 84-703
definitions, 84-704
expenses limited, 84-705
judicial review, 84-709.1
minutes of proceedings, 84-705
office, furnishings and supplies, 84-706
organization of board, 84-703
personnel, employment, 84-705
powers and duties, 84-708
qualifications and compensation of members, 84-702
quorum, 84-703
rules, adoption authorized, 84-705
transfer of board to department of administration for administrative purposes, 84-702
State to appraise, assess, and equalize valuation of property, 1972 Const., VIII, 3
Store license tax, vending machines excepted, 84-2410
Suspense account for receipts and refunds, 84-725
Telegraph or telephone microwave electronic equipment, assessment and apportionment, 84-708
Tobacco tax (cigarettes excluded), 84-6801 to 84-6807
definitions, 84-6801
defrayment of wholesaler's expenses, 84-6806
department of revenue, rule-making power, 84-6807
direct tax on consumer, 84-6802
refunds, 84-6806
unlawful sales, 84-6804, 84-6805
wholesaler's duties, 84-6802, 84-6803
University system, property tax for, 84-3804
Unprocessed agricultural products, classification, 84-301
Veterans, classification of disabled veteran's dwelling house for taxation, 84-301
Wheat, assessment on annual crop when sold, 3-2911 to 3-2913

TELEPHONE AND TELEGRAPH
Abuse, harassment or extortion by telephone, penalty, 94-35-221.5, 94-35-221.6
Credit card, unauthorized use, 94-1823
interstate communications, application of credit law to, 94-1830
knowledge implied from use of false or revoked credit card or telephone number, 94-1828
notice of revocation of credit card, manner of giving, 94-1827

TELEPHONE AND TELEGRAPH (Continued)
Emergency call, failure to relinquish line for, penalty, 94-35-221.1
emergency as defense, 94-35-221.2
false pretext of emergency, penalty, 94-35-221.3
lack of knowledge as defense, 94-35-221.2
printing of act in directories, 94-35-221.4
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3
Fraudulent devices to obtain service without payment, 94-1824
Injury to or removal of coin box or wires, penalty, 94-3211
Tampering with or tapping lines, penalty, 94-3203
Taxation
license tax proceeds, disposition, 84-1901
microwave electronic equipment, assessment and apportionment, 84-708
Underground facilities, conversion to, 70-601 to 70-635—See PUBLIC UTILITIES, Underground conversion
Underground facilities protected from excavations, 32-4801 to 32-4808—See STREETS, Underground facility

TELETYPEWRITER COMMUNICATIONS SYSTEM
See LAW ENFORCEMENT TELETYPEWRITER COMMUNICATIONS, 82-3901 to 82-3906

TELEVISION
Defamatory statements, notice to broadcaster and opportunity to correct, 64-207.1
Definitions, 70-402
Districts
abandonment of district, disposition of property and funds, 70-425
annexation of contiguous areas to district, 70-426
areas includible in district, 70-410
assessor to list television owners within district, 70-417
budget for district, preparation and presentation, 70-418
cable systems not within purpose of district, 70-408
filing of order creating district, 70-415
funds, disbursement, 70-419
hearing on formation of district, 70-414
naming of district, 70-415
organization of districts authorized, 70-409
petition to form district, contents, 70-411
filing and transmission of petition to county commissioners, 70-412
powers of districts, 70-420
publication of petition and notice of meeting to consider, 70-413
purposes for which districts authorized, 70-408
resolution creating district or denying petition, 70-414
tax on television sets, levy, 70-418
exemption of taxpayers who do not benefit from translator, 70-422
false or fraudulent claim for exemption, misdemeanor, 70-424
treasurer of district, 70-419
trustees of district
appointment and terms, 70-416
expenses, reimbursement, 70-421
meetings of trustees, 70-423
Educational television
advisory committee on educational television, 75-5711
state superintendent as co-ordinator, 75-5710
Freedom of speech, expression, and the press, 1972 Const., II, 7
Information sources protected from disclosure, 93-701-4
Legislative purpose, 70-401
License for operation of VHF booster or VHF translator system
application, 70-404
contents of application, 70-404
fee for license, 70-405

TELEVISION (Continued)
License for operation of VHF booster or VHF translator system (Continued)
issuance, 70-405
requirement, 70-403
Publication of notice supplemented by broadcast, 19-201
copy of transcript to be retained by broadcasting station, 19-202
proof of broadcast, 19-203
Rules and regulations, 70-406
Violations of act, penalty, 70-407

TERMS OF COURT
Expiration, effect on time limitation in civil proceedings, M. R. Civ. P., Rule 6(c)

THEATERS
Sanitary inspections and correction of conditions by boards of health, 69-4118

TIME
Computation of time allowed in civil proceedings, M. R. Civ. P., Rule 6(a)
Extension of time allowed in civil proceedings, M. R. Civ. P., Rule 6(b)
Term of court, effect on limitations in civil proceedings, M. R. Civ. P., Rule 6(c)

TORTS
Action for damages from construction of improvements to real property, statute of limitations, 93-2619 to 93-2623
Licensees for recreational purposes, landowner's restricted liability to, 67-808
definition of recreational purposes, 67-809
Medical malpractice, statute of limitations, 93-2624
Sovereign immunity abolished, 1972 Const., II, 18; 83-706.1
Tort actions against state, 83-701 to 83-707—See STATE OF MONTANA, Tort actions against

TOURIST CAMPS
Definition, 69-5601
Inspection of grounds by state and local officers, 69-5605
operators to permit inspections, 69-5603
License required for operation, 69-5603
application for license, 69-5604
denial or revocation of license, hearing, 69-5606
expiration of license, 69-5604
fee for license, 69-5604
Penalties for violations, 69-5607
Rules for operation adopted by department, 69-5602
posting of rules, 69-5603

TOWNSHIPS
Mileage allowances to officers for use of own vehicles, 59-801
liability for approval of excess amount, 59-802

TRADE-MARKS
Indian articles, regulations for sale of imitation articles, 85-301 to 85-304
Recording of trade-marks by secretary of state, 85-103
fees of secretary of state, 25-102

TRAILER COURTS
See TOURIST CAMPS

TRAMWAYS
See PASSENGER TRAMWAYS, 69-6601 to 69-6617

TREASON
Requirements for conviction, effect of conviction, attainder of treason by legislature prohibited, 1972 Const., II, 30
Venue of prosecution, 95-412

TRIALS

Assignment of cases for trial, M. R. Civ. P., Rule 40
Calendar for trial, placement of actions, M. R. Civ. P., Rule 40
Consolidation of actions for trials, M. R. Civ. P., Rule 42(a)
Criminal cases, 95-1901 to 95-1916—See CRIMINAL PROCEDURE, Trials
Exceptions to rulings of court unnecessary, M. R. Civ. P., Rule 46
Findings by court, separate statement, M. R. Civ. P., Rule 52(a)
Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
Instructions to jury, M. R. Civ. P., Rule 51
Jury trial
- advisory jury, M. R. Civ. P., Rule 39(c)
- court ordering jury trial, M. R. Civ. P., Rule 39(b)
- demand for jury trial, M. R. Civ. P., Rule 38(b)
- issues, designation for jury trial, M. R. Civ. P., Rule 38(c)
- right to jury trial in civil cases, M. R. Civ. P., Rule 38(a)
- right to jury trial in criminal cases, 95-1901, 95-2004
- summoning of jurors, 93-1509
- waiver of right to jury trial, M. R. Civ. P., Rule 38(d)

Open court trials required, M. R. Civ. P., Rule 77
Separation of claims for trials, M. R. Civ. P., Rule 42(b)
Summoning of jurors, 93-1509

TRUST INDENTURES

Acceleration provisions not applied when grantor cures default, 52-412
Authorization of trust indentures, 52-404
Citation of act, 52-401
Deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
Definition of terms, 52-403
Foreclosure
- attorney's fees allowed on foreclosure, 52-416
- deed given by trustee after sale, contents and effect, 52-410
- deficiency judgment not allowed after foreclosure by advertisement and sale, 52-414
- discontinuance of proceedings on payment of amount in default, 52-412
- fees allowed on foreclosure, 52-416
- notice of sale by trustee
  - affidavits of mailing, posting and publication, recording, 52-409
  - cancellation on cure of default before sale, 52-412
  - mailing, posting and publication of notice, 52-409
  - recording of notice, 52-408
  - requests for copies of notice, recording, 52-415
- parcels in which sold, 52-409
- payment of price bid in cash, 52-409
- possession of property, when purchaser at trustee's sale entitled to, 52-411
- postponement of sale, 52-409
- proceeds of sale by trustee, disposition, 52-413
- real estate brokers' act inapplicable to sale by trustee, 66-1926
- refusal of successful bidder to pay purchase price, 52-409
- required conditions for foreclosure by advertisement and sale, 52-408
- sale to highest bidder, 52-409
- time within which proceedings to be commenced, 52-407

Mortgage laws, application to indentures, 52-417
Policy of state declared, 52-402
Power of sale implied in indenture, 52-404
Qualifications of trustee, 52-405
Reconveyance to grantor on performance of obligation secured, 52-406
Short title of act, 52-401
Size of tract for which indenture authorized, 52-404
Substitution for previously existing mortgage prohibited, 52-404
Successor trustee, appointment, filing, 52-405

TRUST RECEIPTS

See SECURED TRANSACTIONS, 87A-9-101 to 87A-9-507

TRUSTS AND TRUSTEES

Action brought without joining beneficiaries as parties, M. R. Civ. P., Rule 17(a)
Business corporations, voting trusts, 15-2232
Business trusts, 15-2501 to 15-2508—See BUSINESS TRUSTS
Compensation of trustee, 86-511
Devise or bequest in will to trustee of inter vivos trust established by testator
  effect of entire revocation of trust prior to death, 91-321
  property not deemed held under testamentary trust, 91-321
  validity, 91-321
Equipment trusts, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Institutional funds management, 86-801 to 86-809—See MANAGEMENT OF INSTITUTIONAL FUNDS
Investments, retention permitted when received from source other than purchase, though not qualified investment, 86-327
Massachusetts trust, 15-2501 to 15-2508—See BUSINESS TRUSTS
Pension trusts, statutory or common-law rules relating to restraint against alienation, suspension of power of alienation, accumulation of income, perpetuities or remoteness of vesting, not applicable to, 67-423
Principal and income act—See PRINCIPAL AND INCOME ACT
Real estate brokers' act inapplicable to trustees, 66-1926
Rules of civil procedure, application in administration, M. R. Civ. P., Rule 81(a), Table A
Statement of trustee to income trust beneficiary, 86-513
Validity, 67-424

TUBERCULOSIS

Commitment to hospital for diagnosis and treatment
  court costs, expenses and fees, payment by county, 69-4315
  detention at hospital of person committed, 69-4311
  failure to submit to examination as cause for commitment, 69-4309
  maintenance and treatment expenses at state hospital, payment, 69-4316
  order of commitment forwarded to hospital and board of health, 69-4310
  release from commitment to hospital, 69-4313
    court order for release, 69-4312
  transfer between hospitals of person committed, 69-4314
  transportation expenses, payment by county, 69-4316
  warrant directed to sheriff, 69-4310
Definition of terms, 69-4302
Examination of suspected cases ordered by district court
  application for court order, contents, 69-4306
  commitment to hospital on failure to submit to examination, 69-4309
  court costs, expenses and fees, payment by county, 69-4315
  findings and order of court, 69-4308
  hearing on application, procedure, 69-4307
Facilities for treatment maintained by state hospital, 69-4317
Federal funds, acceptance and use, 69-4304
Policy of state, 69-4301
Rules for determination of communicable state, 69-4303
State departmental powers, 69-4304
Suspected cases of tuberculosis, application for examination or commitment, 69-4305

U

UNCLAIMED PROPERTY

See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNDERTAKERS

See MORTICIANS AND FUNERAL DIRECTORS, 66-2701 to 66-2717

UNEMPLOYMENT COMPENSATION

Account in agency fund
  custodian of account, 87-112
  establishment of account, 87-111

References are to Title and Section numbers

UNEMPLOYMENT COMPENSATION (Continued)
Account in agency fund (Continued)
moneys paid into account, 87-111
subaccounts, enumeration and use, 87-112
Administration account in federal and private revenue fund, sources and use, 87-133
Benefits
disqualification for benefits, 87-106
duration of benefits, 87-104
eligibility conditions, 87-105
extended benefits, 87-104, 87-128
qualifying wages, 87-103
reciprocal arrangements with other states or United States, 87-129
weekly benefit amounts, 87-103
Commission
abolition and transfer of functions, 82A-1007
quasi-judicial functions, 82A-1009
change of name to employment security commission, 87-117
office building on capitol grounds, 78-1001 to 78-1020—See STATE CAPITOL, Employment security commission building
reporting requirements, 82-4002, 87-120
service buildings outside capitol area
architect, employment, 78-1022
bids for construction contracts, 78-1023
bond issue authorized, 78-1021
amount of bonds, 78-1024
interest and sinking fund, 78-1028
interest rate on bonds, 78- 1025
payments of principal and interest, 78-1027
purchase of bonds by board of land commissioners, 78-1029
registration of bonds, 78-1026
sale of bonds, 78-1026
terms and provisions of bonds, 78-1025
budget act not applicable, 78-1030
contractor's bond, 78-1023
design of buildings, 78-1022
purchase of land for buildings authorized, 78-1021
Contributions by employers
levy and sale for collection of contributions, 87-139
maximum wages used as basis for contributions, 87-109
review of decision on liability, appeal, 87-109
schedule of contributions, 87-109
Cooperation with federal government, 87-128
Definitions used in act, 87-148, 87-149
Division of employment security created, 82A-1006
functions of division, 82A-1007
Extended benefits, co-operation with federal government, 87-104, 87-128
Federal moneys paid into administration account, 87-133
Higher education institutions operated by political subdivisions, election of coverage of employees in, 87-110
Hospitals operated by political subdivisions, election of coverage of employees in, 87-110
Penalties for violations, 87-145
Reciprocity in collection of unpaid contributions, 87-136
Rules of civil procedure, application to review of orders, M. R. Civ. P., Rule 81(a), Table A
Secretary of labor, approval of act by, 87-152

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION
Assurance of voluntary compliance, acceptance by department authorized, filing, formal requirements, 85-409
County attorney to assist department in commencement and prosecution of actions, 85-416
employee as full-time investigator, 85-417
Definition of terms, 85-401

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION (Continued)
Dissolution or forfeiture of corporate franchise for violation, 85-414, 85-415
Door-to-door sales, 85-501 to 85-506
cancellation of home solicitation sale, right of buyer, time allowed, notice, 85-503
notice to buyer of right to cancel, form and contents, 85-504
notice to seller, 85-503, 85-504
return of goods by buyer, when required, 85-503, 85-505, 85-506
care of goods by buyer, 85-506
definition of terms, 85-502
purpose of law, 85-501
return of down payment to buyer required, time allowed, 85-505 (1), (2)
liability of seller for failure, 85-505 (3)
retention of goods by buyer pending return of payment, 85-505 (4)
Exempt acts and transactions, 85-404
Fraudulent course of conduct, punishment, 85-414
Hearings by department authorized, 85-411
Injunction proceedings by department to restrain unlawful acts authorized, 85-405
additional orders or judgments authorized, 85-406
receiver, appointment, 85-406, 85-407
persons having suffered damages as claimants, 85-407
powers of receiver generally, 85-407
scope of receivership generally, 85-407
restoration of moneys or property to person injured, 85-406
revocation of license or certificate to do business, 85-406
venue of action, 85-405
violation of injunction, civil penalties, 85-414
Investigative demands relating to unlawful practices served by department, return date, extension, 85-410
Judicial enforcement of department orders, relief available, 85-413
Oaths, administration by department, 85-411
Private actions for damages by persons suffering loss, amount of recovery, 85-408 (1)
attorney fees recoverable, 85-408 (3)
class actions not authorized, 85-408 (1)
judgment or decree in state proceedings as prima facie evidence, 85-408 (4)
judgment or decree mailed to department and county attorney, 85-408 (2)
Process, when substitute service authorized, 85-412
Rules and regulations having force of law, 85-411
Subpoena power of department, 85-411
Title of law, 85-418
Unfair competition and deceptive practices unlawful, 85-402
federal interpretations given weight, 85-403
interpretive rules of department, consistency with federal interpretations required, 85-403

UNIFORM COMMERCIAL CODE
Acceleration of performance, good faith required in exercising option, 87A-1-208
Actions permitted to enforce rights and obligations, 87A-1-106
Agreement as to which state's laws apply, 87A-1-105
Agreement to vary terms of code, 87A-1-102
Authenticity of third-party documents presumed, 87A-1-202
Bank deposits and collections, 87A-4-101 to 87A-4-504—See BANKS AND BANKING, Deposits and collections
Bills of lading, 87A-7-101 to 87A-7-105, 87A-7-301 to 87A-7-603—See BILLS OF LADING
Bulk transfers, 87A-6-101 to 87A-6-111—See BULK TRANSFERS
Captions as part of act, 87A-1-109
Citation of act, 87A-1-101
Commercial paper, 87A-3-101 to 87A-3-805—See COMMERCIAL PAPER
Conflict of laws, 87A-1-105
Course of dealing between parties, application, 87A-1-205
Damages, principles for measurement, 87A-1-106
Definition of terms in general, 87A-1-201
Documents of title, 87A-7-101 to 87A-7-603—See BILLS OF LADING; WAREHOUSE RECEIPTS

References are to Title and Section numbers

UNIFORM COMMERCIAL CODE (Continued)
Effective date, 87A-10-101
Gender of words used, interchangeability, 87A-1-102
Good faith obligation imposed, 87A-1-203
Investment securities, 87A-8-101 to 87A-8-406—See INVESTMENT SECURITIES
Letters of credit, 87A-5-101 to 87A-5-117—See LETTERS OF CREDIT
Liberal administration of remedies, 87A-1-106
Mortgage law, conflicts with, 52-117
Plural includes singular, 87A-1-102
Policies of act, 87A-1-102
Prior transactions, application of prior law to, 87A-10-102
Purposes of act, 87A-1-102
Renunciation of claim or right without consideration, 87A-1-107
Repeal of code provisions not to be implied, 87A-1-104
Reservation of rights by party while performing or assenting to performance, 87A-1-207
Sale of goods, 87A-2-101 to 87A-2-725—See SALES
Saving of certain laws from repeal by code, 87A-10-103
Secured transactions, 87A-9-101 to 87A-9-507—See SECURED TRANSACTIONS
Severability of provisions, 87A-1-108
Short title, 87A-1-101
Singular includes plural, 87A-1-102
Storage deposits, applicability to, 20-314
Supplementary general principles of law applicable, 87A-1-103
Territorial application by agreement, 87A-1-105
Time allowed for required actions, 87A-1-204
Transitional provisions, 87A-10-102
Usage of trade, application, 87A-1-205
Variation of terms by agreement, 87A-1-102
Waiver of claim or right without consideration, 87A-1-107
Warehouse receipts, 87A-7-101 to 87A-7-210, 87A-7-401 to 87A-7-603—See WAREHOUSE RECEIPTS

UNIFORM CRIMINAL EXTRADITION ACT
Accused person's rights to be observed, 95-3110
  arrest upon affidavit without requisition, 95-3113
  arrest without warrant, requirements for, 95-3114
  bail, when allowed, 95-3115, 95-3116
  commitment to await requisition, 95-3115
    extension of commitment period, 95-3117
    forfeiture of bail, 95-3118
  taking of accused before court, informing of rights, 95-3110
  willful disobedience by officer as misdemeanor, punishment, 95-3111
Confinement of accused in jail when necessary, 95-3112
Definitions, 95-3101
Demand for extradition, formal requirements, 95-3103
  investigation of demand, 95-3104
Fugitive from another state, duty of governor, 95-3102
Fugitive from this state, issuance of warrant by governor, 95-3122
  application and issuance of requisition, 95-3123
  officer procuring demand or surrender, fee for services prohibited, violation as misdemeanor, 95-3125, 95-3126
  person returning prisoner, audit of accounts, payment, 95-3124
Guilt or innocence of accused not subject to inquiry, 95-3120
Habeas corpus, accused to be allowed to apply for writ of, 95-3110
Immunity of certain fugitives from service of civil process, 95-3127
  no immunity from other criminal prosecutions, 95-3130
Persons imprisoned or awaiting trial in another state, extradition to this state, return, 95-3105
Persons not present in demanding state at time of commission of crime, 95-3106
Persons under prosecution in this state at time of requisition, 95-3119
Persons under prosecution in this state, extradition to demanding state, 95-3105
Waiver of extradition by accused, procedure, 95-3128
  nonwaiver by state by acts or provisions of law, 95-3129

References are to Title and Section numbers

UNIFORM CRIMINAL EXTRADITION ACT (Continued)
Warrant, issuance by governor, 95-3107
alias warrant, when issued by governor, 95-3121
authority of arresting officer, 95-3109
execution of warrant, 95-3108

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT
See PROPERTY, Unclaimed property, 67-2201 to 67-2230

UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT
See PUBLIC OFFICERS AND EMPLOYEES, Facsimile signatures of public officials

UNIFORM PRINCIPAL AND INCOME ACT
Text, 67-1901 to 67-1916—See PRINCIPAL AND INCOME ACT

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT
See SUPPORT, Reciprocal enforcement, 93-2601-41 to 93-2601-82

UNITED STATES
Compact with United States not affected by 1972 Constitution, 1972 Const., I
Installations and facilities donated to state, acceptance by board of examiners, 81-1101.1
Land grants, restrictions on disposition, 1972 Const., X, 11
Migratory bird reservations, consent to acquisition, 83-113
Property tax exemption, 1972 Const., VIII, 5
Veterans administration center, state jurisdiction accepted, 83-114

UNIVERSITY OF MONTANA
See COLLEGES AND UNIVERSITIES

UNIVERSITY SYSTEM
See COLLEGES AND UNIVERSITIES, Montana university system

URBAN RENEWAL LAW
See CITIES AND TOWNS, Urban renewal law

USURY
Secured Transactions chapter, usury law not affected by, 87A-9-201

V

VEHICLE EQUIPMENT SAFETY COMMISSION
Accounts of commission, inspection by state examiner, 32-21-174
Budgets submitted to state budget director, 32-21-173
Co-operation of governmental agencies with commission, 32-21-171
Creation by terms of interstate compact, 32-21-166
Documents of commission to be filed with highway patrol board, 32-21-172
Legislative approval required for rules and regulations of commission, 32-21-168
Notices to be filed with highway patrol supervisor, 32-21-172
Representation of Montana on commission, 32-21-169
Retirement of commission employees, 32-21-170

VENDING MACHINES
Store license tax, vending machines excepted, 84-2410
Use of device to open or break to commit larceny unlawful, penalty, 94-35-249

VENEREAL DISEASE
Blood tests, standards and laboratories approved by department, 69-4611
Certificates of freedom from disease, restrictions on issuance and use, 69-4609
Consent by minors to medical or surgical care, 69-6101 to 69-6105—See CHILDREN AND MINORS
Definition of disease, 69-4601
Disclosure of information on persons infected, restrictions, 69-4610

References are to Title and Section numbers

VENEREAL DISEASE (Continued)
Drugs for treatment of disease, restrictions on sale or recommendation, 69-4608
Educational campaigns for control of disease, 69-4602
Examination of suspects required by health officer, 69-4605
Exposure of other persons prohibited, 69-4601
misdemeanor, 69-4617
report of exposure to state department, 69-4607
Federal funds, acceptance and use for control of disease, 69-4603
Isolation of persons who refuse examination or treatment, 69-4605
Penalty for violation of chapter or rules, 69-4617
Prisoners, examination and treatment for disease, 69-4606
Privileged information concerning infected persons, 69-4610
Reports of cases by physicians, 69-4604
exposure of other persons to be reported, 69-4607
Rules of state board having effect of law, 69-4616
State department's functions with respect to disease, 69-4602
Treatment required by health officer, 69-4605

VENUE
Change of venue in civil cases, procedure, M. R. Civ. P., Rule 12(b)
payment of costs and fees by party filing complaint, 93-2908
Change of venue in criminal cases, 1972 Const., II, 24; 95-401, 95-1710
justices' and police courts, 95-2003
Rules of civil procedure do not affect venue, M. R. Civ. P., Rule 82

VERDICTS
Coroner's inquest, verdict in writing, contents, 95-807
Criminal cases, 95-1909, 95-2006—See CRIMINAL PROCEDURE, Verdicts
Directed verdict, motion for, M. R. Civ. P., Rule 50
Interrogatories to jury, M. R. Civ. P., Rule 49(b)
Judgment, entry on verdict, M. R. Civ. P., Rule 58
Judgment notwithstanding the verdict, motion for, M. R. Civ. P., Rules 50(b) to (d)
conditional rulings on grant of motion, M. R. Civ. P., Rule 50(c)
denial of motion, M. R. Civ. P., Rule 50(d)
Number of jurors required to concur in civil cases, 1972 Const., II, 26; M. R. Civ. P., Rule 48
six-member jury, 93-1205
Special verdicts, M. R. Civ. P., Rule 49(a)

VETERANS
Bonds for payment or redemption of compensation bonds, 79-2202, 79-2205
Burial of veteran, duties of county clerk, 71-123
Fort Harrison Veterans Administration Center, state jurisdiction accepted, 83-114
Home for veterans
constitutional provision for establishment of institutions and facilities, 1972 Const., XII, 3
cost of support, payment by resident or responsible person, 80-1601 to 80-1604—See STATE INSTITUTIONS, Cost of support of residents
eligibility for residence in home, 80-1803
wives and widows admitted as space allows, 80-1801
federal money, acceptance and use for benefit of home, 80-1804
industrial activities permitted, 80-1501 to 80-1503—See STATE INSTITUTIONS, Industrial activities permitted
location, 80-1801
management and control of home, 80-1401 to 80-1409—See STATE INSTITUTIONS, Department of institutions
purpose of home, 80-1801
superintendent to be honorably discharged veteran, 80-1802
License plates issued free to disabled veterans, 53-106.8
one automobile, limitation to, 53-106.10
transfer of plate prohibited, 53-106.9
wrongful attempt to secure plates as misdemeanor, 53-106.11
Organizations housed in Veterans and Pioneers Memorial Building, 78-202

References are to Title and Section numbers

VETERANS (Continued)
Special treatment in the law, 1972 Const., II, 35
Taxation, classification of disabled veteran's dwelling house, 84-301
Welfare commission renamed and transferred to department of social and rehabilitation services, 82A-1905

VETERANS AND PIONEERS MEMORIAL BUILDING
See STATE CAPITOL, 78-202

VETERANS' MEMORIAL MONEYS
Appropriations, requests for, 78-302
Commission abolished, 82-3322
Purpose of expenditures, 78-302

VETERINARY MEDICINE
Alcoholic beverage, administration by veterinary, 4-138
Board of examiners transferred to department of professional and occupational licensing, 82A-1602
  administrative services provided by department, 82A-1603
  compensation of members and officers of board, 66-2203
  continuation in office of board members, 82A-1606
  employment of personnel for board, 82A-1604
  legal assistance in hearings by board, 82A-1604
  moneys received by board, deposit and use, 66-2203
  records of board, 66-2203
  report of board to governor, 66-2203
  retention of functions by board, 82A-1605
Corporations for practice of veterinary medicine, 15-2101 to 15-2116—See PROFESSIONAL SERVICE CORPORATIONS
Examination of applicants for license to practice, 66-2204
Malpractice, statute of limitations, 93-2624
Pregnancy and fertility testing within scope of practice, 66-2209
  exemptions from veterinary practice law unimpaired, 66-2209.2
  testing of own animals not prohibited, 66-2209.1
Qualifications of applicants for license to practice, 66-2204
Temporary permit to practice, 66-2204

VETO
Governor's power, 1972 Const., VI, 10

VITAL STATISTICS
Adoption report filed by clerk of court, 69-4433
  substitute birth certificate, issuance, 69-4420
    recording of substitute certificate, 69-4421
    restoration of original certificate on annulment of adoption, 69-4421
Annulment of marriage, certificate prepared and forwarded by clerk of court, 69-4433
  information required in certificates, 69-4411
  report prepared by clerk, contents, 69-4434
Birth certificates, filing required, 69-4413
  adoption of child, issuance of substitute certificate, 69-4420
    recording of substitute certificate, 69-4421
    restoration of original on annulment of adoption, 69-4421
  amendment of certificate permitted, 69-4416
    notation on altered certificate, 69-4417
    probative value of altered certificate, 69-4419
  delayed certificate, filing permitted, 69-4416
    notation on delayed certificate, 69-4417
    probative value of delayed certificate, 69-4419
  evidentiary value of certificates, 69-4412
  forwarding and filing of original certificates, 69-4411
  foundlings, report constituting certificate, 69-4415
  illegitimacy disclosed only on court order, 69-4422
  information required in certificates, 69-4411
  judicial procedure for establishment of date and place of birth, 69-4418

VITAL STATISTICS (Continued)
Birth certificates (Continued)
legitimation of child, issuance of new certificate, 69-4423
unattended births, supplementary report by registrar, 69-4414
Burial permit required for disposition of dead body, 69-4428
delay in determining cause of death, issuance of permit, 69-4427
disinterment, permit required, 69-4428.1
importation of body into state, indorsement of permit, 69-4429
Certified copy of certificates furnished on request, 69-4406
fee for certified copy, 69-4407
disposition of fees, 69-4408
local registrars not to issue certified copies, 69-4411
Death certificate, preparation and filing, 69-4425
amendment of certificate permitted, 69-4416
burial permit, certificate or notice of delay required for, 69-4428
delay in determining cause of death, notice of reason required, 69-4427
evidentiary value of certificates, 69-4412
filing and forwarding of original certificates, 69-4411
information included in certificates, 69-4411
information to be furnished state registrar on demand, 69-4435
time of filing, 69-4424
unattended death, information used to complete certificate, 69-4426
Definition of terms, 69-4401
Disclosure of information from records restricted, 69-4404
governmental agencies, disclosure to, 69-4405
illegitimacy, court order required for disclosure, 69-4422
statistical use of information permitted, 69-4405
Divorce certificate, preparation and forwarding by clerk of court, 69-4433
evidentiary value of certificates, 69-4412
information furnished to state registrar on demand, 69-4435
information to be included in certificate, 69-4411
report by clerk, contents, 69-4434
Institutions to report information pertaining to inmates or patients, 69-4430
Local registrars, appointment and supervision, 69-4409
deputies, appointment, 69-4410
fees paid to local registrars, 69-4431
Marriage certificates filed, report to state board, 69-4432
evidentiary value of certificates, 69-4412
information included in certificates, 69-4411
information to be furnished state registrar on demand, 69-4435
State department powers and duties, 69-4403
State-wide system established by department, 69-4402
Violations of act or regulations
local registrars to report violations, 69-4410
major violations, penalty, 69-4436
minor violations, penalty, 69-4437

VOCATIONAL SCHOOL FOR GIRLS
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

W

WAGES
Assignment of claims against state, 83-901 to 83-904
Assignments excluded from Uniform Commercial Code, 87A-9-104
Minimum wages, 41-2303
cumulative provisions, 41-2307
definition of terms, 41-2302
enforcement by wage claim action, 41-2306
excluded employment, 41-2304
farm workers, minimum wages for, 41-2303
interstate employment excluded, 41-2307
overtime payments, 41-2303
policy of state, 41-2301
regulations for enforcement, 41-2305

WAGES (Continued)
Payment of
failure to pay when due
assignment and prosecution of claim by commission, 41-1314.2
investigations and inspections by commissioners, 41-1314.1
separation from employment before payday, when payable, 41-1303
Restaurant, Bar and Tavern Wage Protection Act
affidavit of ownership of equipment required of lessees, 41-2005
time of filing affidavit, 41-2006
bond required of lessee engaging in business, 41-2002
amount of bond required, 41-2005
cancellation of bond revokes certificate, 41-2006
condition of bond, 41-2006
discharge of sureties from further liability, 41-2010
increase in bond required by commissioner, 41-2010
new bond required by commissioner, 41-2010
state as obligee of bond, 41-2006
time of filing bond, 41-2006
certification of lessee on filing of bond, 41-2009
crediting and use of application fees, 41-2011
revocation of certificate by cancellation of bond, 41-2006
definition of terms, 41-2004
injunction against engaging in business until bond filed, 41-2008
lessor's liability for wages unpaid by lessee, 41-2007
purpose of act, 41-2003
short title, 41-2001

WAIVER
Affirmative defense, M. R. Civ. P., Rule 8(c)

WAR
Civilian control of military, 1972 Const., II, 32
Continuity in government, post-enemy-attack
citation of act, 82-3801
city or town executives, succession to offices, 82-3805
city or town governing bodies, succession to membership, 82-3804
constitutional provisions, 1889 Const., V, 46; 1972 Const., III, 2
county commissioners, succession to board membership, 82-3803
duration of operation of act, 82-3809
governorship, succession to, 82-3802
quorum for state or local governing bodies, 82-3806
seat of local government, moving, 82-3808
seat of state government, moving, 82-3807
Importation of armed forces for preservation of peace or suppression of domestic violence, 1972 Const., II, 33
Quartering of soldiers in houses prohibited, 1972 Const., II, 32
Resource management, post-enemy-attack
abolition of state office and transfer of functions, 82A-1402
citation of act, 77-1501
definition of terms, 77-1503
emergency resource planning committee, members, 77-1504
abolition of committee, 82A-1404
governor
powers and duties, 77-1505
proclamation of emergency, 77-1506
legislative findings, 77-1502
policy of state, 89-1502
proclamation of emergency by governor, 77-1506
judicial inquiry as to proclamation and facts, 77-1507
violation of rules and regulations, penalty, 77-1508

WAREHOUSE RECEIPTS
Actions based on bailment, terms in receipt prescribing time and manner of instituting, 87A-7-204

References are to Title and Section numbers

WAREHOUSE RECEIPTS (Continued)
Altered receipt, enforceability, 87A-7-208
Attachment of goods covered by documents, procedure required, 87A-7-602
Authenticity of third-party documents presumed, 87A-1-202
Bills of lading law, provisions included in but omitted from warehouse receipts law, 87A-7-105
Bond against withdrawal required by law, effect of receipt issued by owner of goods, 87A-7-201
Care required of warehousemen to prevent loss or injury to goods, 87A-7-204
Citation of Uniform Commercial Code chapter, 87A-7-101
Claims based on bailment, terms in receipt prescribing time and manner of presenting, 87A-7-204
Commercial Paper chapter inapplicable to receipts, 87A-3-103
Conflicting claims to goods, warehouseman compelling interpleader, 87A-7-603
Contents required or permitted in receipts, 87A-7-202
Course of dealing between parties, application, 87A-1-205
Damages for loss or injury to goods, limitation by contract, 87A-7-204
Defenses defeated by negotiation of receipt, 87A-7-502
Definition of terms, 87A-7-102
  general definitions in Uniform Commercial Code, 87A-1-201
Delivery of goods by warehouseman
  destroyed receipt, 87A-7-601
  failure to require receipt, criminal penalty, 88-154
  good faith delivery exonerating warehouseman, 87A-7-404
  lien lost by voluntary delivery, 87A-7-209
  lien to be satisfied before delivery, 87A-7-403
  lost receipt, 87A-7-601
  obligation of warehouseman to deliver, 87A-7-403
  persons who may require delivery, 87A-7-403
  stolen receipt, 87A-7-601
  surrender of document required before delivery, 87A-7-403
  termination of storage by warehouseman, 87A-7-206
Destroyed receipts, obtaining delivery of goods, 87A-7-601
Deterioration of goods, notice by warehouseman to remove, 87A-7-206
Duplicate receipt, rights and liabilities of parties under, 87A-7-402
  criminal penalty for issuance, 88-152
Endorsement of receipt
  default by warehouseman or previous endorser, endorser not liable for, 87A-7-505
  negotiation, when endorsement required for, 87A-7-501
  nonnegotiable receipt, effect of endorsement, 87A-7-501
  transferee's right to require necessary endorsement, 87A-7-506
Federal law controlling over Commercial Code chapter, 87A-7-103
Formal requirements of receipt, 87A-7-202
Fungible goods covered by receipt
  buyer from warehouseman takes free of claim under receipt, 87A-7-205
  commingling permitted, 87A-7-207
  overissue of receipts, persons entitled to goods, 87A-7-207
    liability of issuer for damages, 87A-7-402
Good faith required, 87A-1-203
Hazardous goods, sale or disposition by warehouseman, 87A-7-206
Interpleader of conflicting claims to goods, 87A-7-603
Irregularities in issue of receipt, obligations of issuer unaffected, 87A-7-401
Judicial process against goods covered by receipt, procedure required, 87A-7-602
Letter of credit requirements, law governing adequacy, 87A-7-509
License required for issuance of receipts, effect of receipt issued by owners of goods, 87A-7-201
Lien of warehouseman
  charges covered by lien, 87A-7-209
  delivery of goods causing loss of lien, 87A-7-209
  delivery of goods, satisfaction of lien required for, 87A-7-403
  enforcement of lien, procedure, 87A-7-210
  persons against whom lien enforceable, 87A-7-209
  refusal to deliver goods causing loss of lien, 87A-7-209
  sale of goods to enforce lien, 87A-7-210
  termination of storage at warehouseman's option, sale of goods on, 87A-7-206

References are to Title and Section numbers

WAREHOUSE RECEIPTS (Continued)
Lost receipts, obtaining delivery on, 87A-7-601
Misdescription of goods in receipt, liability of issuer, 87A-7-203
Negotiability of receipt, requirements for, 87A-7-104
Negotiation of receipt
defenses defeated by negotiations, 87A-7-502
delivery required for negotiation, 87A-7-501
endorsement necessary to title, right of holder to require, 87A-7-506
endorsement, when required for negotiation, 87A-7-501
formal requirements for negotiation, 87A-7-501
rights acquired by holder to whom negotiation made, 87A-7-502
title required by holder to whom negotiation made, 87A-7-502
warranties of negotiator, 87A-7-507
intermediary delivering documents, 87A-7-508
Nonreceipt of goods described, liability of warehousemen, 87A-7-203
Omission of required terms from receipt, liability of warehousemen, 87A-7-202
Perishable goods, removal on notification by warehouseman, 87A-7-206
Persons who may issue receipts, 87A-7-201
Prior interest prevailing over interest represented by receipt, 87A-7-503
Regulatory laws controlling over Commercial Code chapter, 87A-7-103, 87A-10-103
Removal of goods from storage on warehouseman's notice, 87A-7-206
Reservation of rights by party while performing or accepting performance, 87A-1-207
Sale contract requirements, law governing adequacy, 87A-7-509
Sale of goods to enforce warehouseman's lien, 87A-7-210
Security interest in receipt, manner of perfection, 87A-9-304
possession taken by secured party, 87A-9-305
Security interest reserved by warehouseman, enforceability, 87A-7-209
Separation of goods required, 87A-7-207
Short title of Uniform Commercial Code chapter, 87A-7-101
Stolen receipts, obtaining delivery on, 87A-7-601
Termination of storage at warehouseman's option, 87A-7-206
Time allowed for required actions, 87A-1-204
Transfer of receipt
endorsement necessary to title, right of transferee to require, 87A-7-506
notification to warehouseman of transfer, adverse interest perfected before, 87A-7-504
rights acquired by transferee, 87A-7-504
title acquired by transferee, 87A-7-504
warranties of transferor, 87A-7-507
intermediary delivering receipt, 87A-7-508
Unaccepted delivery order, negotiation of receipt defeating title based on, 87A-7-503
Unauthorized issuance, obligations of issuer unaffected, 87A-7-401
Unknown goods, description in receipt, 87A-7-203
Usage of trade, application, 87A-1-205
Warranties by transferor of receipt, 87A-7-507
intermediary delivering receipt, 87A-7-508
Wrongfully procured receipts, when defeated by prior interest, 87A-7-503

WARM SPRINGS STATE HOSPITAL
See also STATE INSTITUTIONS
Alcoholism services center, function and procedures, 80-2404
Convalescent leave of patients, 38-502
reports by person under whom patient placed, 38-505
termination of leave, 38-504
Cost of support, payment by resident or responsible person, 38-119, 80-1601 to 80-1604
Definition of terms, 80-2401.1
Discharge of patients on report of medical staff, 38-109
maintenance of indigents after discharge, 38-110
Division of mental hygiene, hospital in, 80-2401—See INSANE AND MENTALLY ILL, Division of mental hygiene
Industrial activities permitted, 80-1501 to 80-1503
Location of hospital, 80-2401
Management and control of hospital, 80-1401 to 80-1409
Nonresident insane persons, receipt pending return to state of residence, 38-120

References are to Title and Section numbers

WARM SPRINGS STATE HOSPITAL (Continued)
Purpose of hospital, 80-2401
Superintendent, qualifications, 80-2402
Transfer of patients from other institutions
Boulder river school and hospital, 80-2308
center for the aged, 80-2502
children's center, 80-2106
Galen state hospital, 80-1703
juvenile facilities of department of institutions, 80-2209
prison inmate, commitment proceedings, 80-1908

WARRANTS
City and town warrants, investment of municipal funds in, 11-1310

WARRANTY
See SALES, warranties
Blood transfusion as service and not sale, 69-2203
immunity of blood bank making proper tests, 69-2204

WATER COMPANIES
Financing statements of utility, contents and place of filing, 87A-9-302.2
definition of terms, 87A-9-302.1
Uniform Commercial Code, application, 87A-9-302.3

WATER CONSERVANCY DISTRICTS
Annexation of realty, 89-3439
preannexation bonds not lien without prior agreement, 89-3440
Assessments, 89-3416, 89-3419
Benefits, 89-3401
Bonds, issuance of, 89-3426
amount to be issued, 89-3427
election, 89-3428, 89-3429
interim receipts, 89-3432
maximum term, 89-3426
more than one purpose, single issue authorized, 89-3426
redemption, 89-3435
refunding authorized, 89-3435
registration of bonds, 89-3433
resolution, 89-3428, 89-3430
retirement fund, 89-3436
sale, 89-3430
proceeds, 89-3434
tax exempt status, 89-3431
Condemnation authorized, 89-3420
Definitions, 89-3403
Directors, powers of, 89-3414
budgetary duties, 89-3417, 89-3418
Dissolution of district, 89-3442 to 89-3447
Elections after organization, procedures, 89-3424
challenges, 89-3425
qualification of electors, 89-3423
Electric energy, 89-3448
Exclusion of territory from district, 89-3441
Merger of districts, 89-3438
Organization of districts
corporate surety bond, 89-3412
directors, 89-3412
election on, 89-3409
filing of documents, 89-3410
meetings, 89-3413
officers, 89-3413
reimbursement for election expenses, 89-3411
Organization petition, court hearing on, 89-3409
Other agencies unaffected, 89-3449

References are to Title and Section numbers

WATER CONSERVANCY DISTRICTS (Continued)
Participation in federal programs, 89-3415
Preliminary survey, petition for, 89-3404
Procedure for organization, 89-3408
Purpose of act, 89-3402
Request for district, water board's action upon receipt of, 89-3405 to 89-3407
  cost as construction cost, 89-3411
Revolving funds, 89-3437
State examiner's duties, 89-3422
Surplus funds, investment of, 89-3419

WATER CONSERVATION
  See FLOOD CONTROL AND WATER CONSERVATION; SOIL AND WATER CONSERVATION; WATER CONSERVANCY DISTRICTS; WATER RESOURCES BOARD; WATERS AND WATER RIGHTS: WATER SUPPLY

WATER POLLUTION
Advisory council on water pollution created, composition, appointment and terms of members, 69-4810
  advisory capacity to department, 82A-607
  former council renamed and continued, 82A-607
  incumbent members, terms not affected, 69-4811
  officers, selection, duties, 69-4812
  per diem and expenses of appointed members, 69-4811
  report and recommendations to board, 69-4813
Classification of waters in relation to beneficial uses to be established, review and modification authorized, 69-4808.2
  hearing by board, notice, procedure, 69-4814
Confidentiality of records and information, 69-4822
Co-operation with other states, federal and state agencies, 69-4808.2
Definition of terms, 69-4802
Department of health abolished, water pollution functions transferred to division of environmental sciences, 82A-602, 82A-604
  administration of water pollution law, 69-4805, 82A-604
  creation of division, assignment of functions, 82A-604
  duties, 69-4809.1
Drainage or seepage water from all sources subject to law, 69-4804
Existing dams considered natural condition, 69-4801
Industrial, public or private projects constituting source of pollution, waste treatment facilities to be required, 69-4808.2
Loans and grants from federal government and other sources, acceptance authorized, 69-4808.2
Local governments ineligible for state matching funds, administration of appropriated funds for purposes of federal law, 69-4808.3
Monitoring and inspection of sewage and waste discharges, duties which may be required of owner, 69-4809.2
Permit required for disposal system or discharge of waste, 69-4806
  issuance of permit, 69-4809.1
  rules of board governing permits, 69-4808.2
  suspension, revocation, modification or denial, notice, hearing, order, effective date, 69-4807.1, 69-4809.1
Policy of state, 69-4801
Protests by other persons or agencies, duties of board, 69-4826
Purity standards to be formulated, review and modification authorized, 69-4808.2
State and local agencies to co-operate in enforcement, 69-4827
State board of health renamed and continued, 82A-605
  duties of board, 69-4808.2, 82A-604
  hearing on suspension, modification, revocation or denial of permits, 69-4807.1
Treatment of wastes, duties of board, 69-4808.2
Unlawful to pollute state waters, 69-4806
Violations, 69-4820 to 69-4823
  corporate officers, responsibility, 69-4820.1

WATER POLLUTION (Continued)
Violations (Continued)
emergency orders to stop, prevent or moderate pollution, notice, hearing, 69-4824
judicial relief, 69-4824.1
enforcement remedies of board, 69-4820.1
existing remedies unaffected, 69-4823
injunctive relief authorized, 69-4820.1, 69-4825
judicial review of board action, appeal to supreme court, 69-4821
notice, hearing by board, procedure, order, penalty, 69-4820
order for abatement of pollution, 69-4820
continued in force pending appeal, 69-4821
penalties for violations, 69-4823

WATER RESOURCES BOARD
Abolition of board and transfer of functions, 82A-1505
Actions at law, powers and duties of board, 89-118
Attorney general, duties as legal adviser to board, 89-103
Citation of act, "Montana Water Resources Act of 1967," 89-101.1
Compensation of appointed board members, 89-103
Contributions and appropriations, power of board to accept, 89-120
Co-ordination of development and use of water resources, state policy, 89-101.2
Damaged or destroyed property, restoration or repair by board, 89-120
Dams and dikes, inspection and determination of safety of, 89-702, 89-702.1
Definition of terms, 89-102
Director, qualifications and appointment, 89-103.1
powers and duties, 89-103.2
salary, 89-103.3
Earmarked moneys available for board, sources, 89-401
payment of expenses from earmarked funds, 89-402
Employees of board, salaries, 89-103, 89-103.3
Floodway management, authority of board, 89-3502
Inventory of water resources, powers and duties of board, 89-132.1
Irrigation districts, creation of, duties of board, 89-1201
Liability of board restricted to moneys provided, 89-120
Meetings of board, quorum, 89-103
Members of board, 89-103
Officers of board, 89-103
Policy of state, declaration of, 89-101.2
Revenue bonds, negotiability and terms, moneys applied to retirement, 89-109
Rules and regulations adopted by board, 89-132.1
Safety of works, water users' association liability for maintaining, 89-115
Salaries of director and employees, 89-103.3
State water plan, state policy, powers and duties of board, 89-101.2, 89-132.1
Transfer of powers from Carey Land Act board and state engineer, 89-103.4
funds and appropriations transferred, 89-103.6
obligations previously assumed unimpaired, 89-103.8
records and property transferred, 89-103.5
Yellowstone Compact obligations unimpaired, 89-103.7
Weather modification, administration of act by board, 89-311

WATERS AND WATER RIGHTS
Abandonment of appropriative right, acts and omissions constituting, 89-894
existing rights, determination required, 89-894
petition filed in district court by department, hearing, determination, 89-895
Administration, control, and regulation of rights, legislative provision for, 1972 Const., IX, 3
Appropriation of water right, permit required, 89-880
adverse use or possession, prescription or estoppel ineffective to establish right to appropriate, 89-880
application for permit, form, 89-880
grant or denial of application, conditions, modification, 89-884
hearing on objections, notice, consolidation, 89-883
notice of application, contents, publication and service, 89-881
objections to application, contents, 89-882

WATERS AND WATER RIGHTS (Continued)
Appropriation of water right (Continued)
controversies between appropriators, determination in district court, 89-896
copy of permit to be kept in office of department, 89-886
criteria for issuance of permit, 89-885
emergency appropriation under rules of board, 89-869, 89-880
federal or interstate controversy, intervention or assistance to appropriator by department, 89-899
filing of oil and gas well logs as compliance, conversion to waterwell, procedure, 89-880
ground water outside controlled area, limited appropriation without permit, procedure, 89-880
permit provisional when issued prior to final determination of existing rights, 89-880
recording of permit, 89-886
reservoir, permit required for appropriation by, 89-889
revocation, notice, grounds, 89-887
statutory method exclusive, exception, 89-880
terms of permit, limitations, 89-886
transfer of right appurtenant to other lands, approval required, 89-893
vested rights not obtained under provisional permit, 89-880
Attorney general to render legal assistance to department, 89-899
Board of natural resources and conservation, powers and duties, 89-869
hearings before board, procedural laws applicable, 89-8-100
Centralized records, 1972 Const., IX, 3; 89-870
Certificate of water rights, issuance, recording, filing of copy, 89-879, 89-888
appropriative right completed, 89-888
existing water right, 89-879
Changes in appropriation rights, departmental approval required, notice, hearing, 89-892
Columbia interstate compact, 89-3201 to 89-3207—See COLUMBIA INTERSTATE COMPACT
Conservancy districts—See WATER CONSERVANCY DISTRICTS
Constitutional provision on water rights, 1972 Const., IX, 3
Conveyance of land as transfer of appurtenant water right, 89-893
County attorneys to render legal assistance to department, 89-899
Definition of terms, 89-867
Department of natural resources and conservation, powers and duties, 89-868
District courts to have supervision of water distribution among appropriators, 89-896
waste of water, proceedings to regulate and prevent, 89-897
Drainage districts—See DRAINAGE DISTRICTS
Entry on land by department to make inspection, notice, responsibility for actual damages, 89-898
Existing rights recognized and confirmed, 1972 Const., IX, 3; 89-870 to 89-879
centralized record system of existing rights, 1972 Const., IX, 3; 89-870
certificate of existing water rights, issuance by department, basis, 89-879
data to be assembled, 89-870, 89-871
declaration of claimants, form, contents, transmittal to department, 89-872
final decree of district court, contents, effect, 89-877
appeal from final decree, 89-878
certificate of water rights, final decree as basis for issuance, 89-879
order requiring claimants of existing rights to file declaration, time allowed, notice, 89-872
petition for determination filed by department in district court, venue, 89-873
additional data required by district court, 89-874
contents of petition, 89-874
preliminary decree of district court, issuance, contents, distribution of copies, 89-875
data forming basis of decree open to inspection by parties, 89-875
hearing in district court on decree, procedure, 89-876
request for hearing on decree, filing, contents, service of copies, 89-876
Fees and penalties, deposit and disposition, 89-8-102
First in time is first in right principle applicable, 89-896

References are to Title and Section numbers

WATERS AND WATER RIGHTS (Continued)
Fish and game affected by construction projects, 26-1501 to 26-1507—See FISH AND GAME, Construction projects affecting fish and game
Flood control and water conservation projects, municipal participation, 89-3301 to 89-3314—See FLOOD CONTROL AND WATER CONSERVATION
Floodway management and regulation, 89-3501 to 89-3515—See FLOOD CONTROL AND WATER CONSERVATION
Ground water regulation
attorney general to assist in enforcement, 89-2930
compilation of information by administrator, 89-2933
contamination of ground water, measures to prevent, 89-2926
controlled ground water areas
authority of administrator to designate, 89-2914
hearing on proposal to establish, 89-2915
modification of previous order, 89-2915
notice of hearing on proposal for establishment, 89-2914
order limiting withdrawals of ground water in area, 89-2915
permit required to appropriate in controlled area, 89-2918
supervisors, appointment by administrator, 89-2932
county attorneys to assist in enforcement, 89-2930
definition of terms, 89-2911
entry of premises, rights of state agents, 89-2927
hearing to determine priorities
aggrieved persons, hearing before board, procedure, 89-2934.1
initiation by claimant or administrator, 89-2916
order, contents, filing, and effect, 89-2917
parties to be included in hearing, 89-2916
information available to public, 89-2928
inspection rights of state agents, 89-2927
investigations requested by administrator, 89-2933
limited appropriation without permit outside controlled area, notice, procedure, 89-880
oath, administration to witness, 89-2934
oil and gas conservation commission, jurisdiction over oil wells producing water, 89-2916
penalties for violation of act, 89-2936
reports required are additional to other requirements, 89-2929
rules and regulations, promulgation and enforcement, 89-2931
subpoena powers of administrator, 89-2934
supervisors, appointment by administrator, 89-2932
waste of ground water, measures to prevent, 89-2926
well logs, form, filing, correction, copy to bureau of mines and geology, 89-2928.1
Inspections by department authorized, 89-898
Instruments of transfer of interest in appropriative right, filing with department and county, 89-893
Interstate compacts, negotiation by water conservation board, 81-2009
Irrigation districts—See IRRIGATION DISTRICTS
Junked motor vehicles, use in streams unlawful, penalty, 94-3552.1, 94-3552.2
Legal counsel, employment by department authorized, 89-899
Litter control law, 94-3335 to 94-3344—See LITTER CONTROL LAW
Oil and gas well logs, filing as compliance, conversion to water well, procedure, 89-880
Policy and purpose declared by legislature, 89-866
Priority between appropriators, rights excluded, effective dates, 89-891
transfer of interest without loss of priority, 89-893
Public use, declaration of, 1972 Const., IX, 3
Reservation of water right by federal or state authority, application, notice, hearing, findings and determination of board, review, 89-890
Reservoirs, permit required for appropriation by, 89-889
Rules of civil procedure, application to special proceedings, M. R. Civ. P., Rule 81(a), Table A
Safe operating conditions, water users' association liability for, 89-115
Sale of appropriative right for other purposes or to other lands, approval required, 89-893

WATERS AND WATER RIGHTS (Continued)
Severance of appropriative right from land, departmental approval required, 89-893
State ownership of water subject to use and appropriation by people, 1972 Const., IX, 3
Taxability of water rights used for irrigation, 84-206
Title of law, 89-865
Transfer of appropriation right generally, 89-893
Violations constituting misdemeanor, penalty, 89-8-101
Water commissioners, appointment and authority in general, 89-1001
district court supervision, 89-896
Water resources board, establishment, members, 89-103—See WATER RESOURCES BOARD
Weather modification activities, 89-310 to 89-331—See WEATHER MODIFICATION
Yellowstone river waters
appropriation statement to be filed with water conservation board, 89-907
information given to compact commission by water conservation board, 89-914
records of water diverted, filing with water conservation board, 89-909
rules and regulations for enforcement of compact, 89-912
weir or other measuring device, duty to install, 89-908

WATER SUPPLY
Boats, discharge of waste prohibited, 69-3508.1
decals, 69-3504.1
equipment required on boats, 69-3505
penalty for violations, 69-3508.2
Cities furnishing water to industries and persons outside city, 11-1001
Domestic water supply, protection
appeal from state board rules and standards, 69-4907
definition of terms, 69-4902
penalty for violations, 69-4908
policy of state, 69-4901
prohibited acts endangering water supply, 69-4905
penalty for violation, 69-4908
state board of health to administer law, 69-4903
powers and duties of state board, 69-4904
well-drillers, information to state board, 69-4906
Excavations in street, protection of lines against damage, 32-4801 to 32-4808—See STREETS, Underground facility
Litter control law, 94-3335 to 94-3344—See LITTER CONTROL LAW
Pollution of water, 69-4801 to 69-4827—See WATER POLLUTION
Subdivisions subject to sanitary restrictions, 69-5003
co-operation of state and local agencies required, 69-5009
definition of terms, 69-5002
enforcement procedures, 69-5007
existing remedies for violation unaffected, 69-5008
penalties for violation, 69-5008
plat not accepted unless in compliance, 69-5004
hearing on request of aggrieved party, 69-5006
policy of state, 69-5001
rules and standards for enforcement of requirements, 69-5005

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS
Board of certification renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment and terms of board members, 69-5903
continuation in office or replacement of board members, 82A-1606
employment of personnel for board, 82A-1604
legal assistance in hearings by board, 82A-1604
meetings of board, 69-5903
retention of functions by board, 82A-1605
Certification of operators by director, 69-5905
application for certificate, 69-5908
examination waived for experienced operators, 69-5906

WATER TREATMENT PLANTS AND DISTRIBUTION SYSTEMS (Continued)
Certification of operators by director (Continued)
fees for certificate, 69-5909
disposition of fees, 69-5908
issuance and display of certificate, 69-5907
reinstatement of suspended or revoked certificate, 69-5909
renewal of certificates, 69-5909
requirement of certified operator for plant or system, 69-5906
retention of certificate after termination of employment, 69-5907
suspension or revocation of certificate, 69-5909
term of certificate, 69-5909
unlawful to operate plant or system without certified operator, 69-5911
Classification of plants and systems, factors considered, 69-5904
Definition of terms, 69-5902
Policy of state, 69-5901
Rules and regulations of board, 69-5910
Violations of act or rules as misdemeanor, 69-5912

WATER WELLS
Contractors
actions for compensation, proof of valid license required, 66-2612
appeals from decisions of examining board, 66-2611
application for license, contents and filing, 66-2606
board of health powers unaffected by license act, 66-2614
bond required of licensees, 66-2609
citation of license act, 66-2601
contractors previously in business, licensing, 66-2606
definition of terms used in license act, 66-2602
drilling on own land exempt from license act, 66-2602
employees of contractor exempt from license act, 66-2602
enforcement powers of examining board, 66-2605
examination of applicants for license, 66-2608
examining board renamed and transferred to department of professional and occupational licensing, 82A-1602
administrative services provided by department, 82A-1603
appointment of board members, 66-2604
composition of board, 66-2604, 82A-1606
continuation in office or replacement of board members, 82A-1606
employment of personnel for board, 66-2604, 82A-1604
legal assistance in hearings by board, 82A-1604
oath of office of board members, 66-2604
retention of functions by board, 82A-1605
seal of board, 66-2604
expiration of licenses, 66-2607
fees for license, 66-2606
inspection of wells by examining board, 66-2605
issuance of license, 66-2606
license required for construction of wells, 66-2603
penalties for violations of license act, 66-2613
public interest affected by business of drilling, 66-2603
purpose of license act, 66-2602
qualifications of applicants for license, 66-2608
renewal of licenses, 66-2607
revocation or suspension of license, 66-2610
failure to renew as ground for revocation or suspension, 66-2607
rules and regulations of examining board, 66-2605
separability of provisions of license act, 66-2614
successor in interest to licensee, completion of business by, 66-2615
temporary license, requirements and issuance, 66-2606
training programs, establishment by examining board, 66-2605
Records and data supplied to state board of health, 69-4906

WEAPONS
Prisoner possessing weapon, penalty, 94-3527.1

References are to Title and Section numbers

WEATHER MODIFICATION

Account in agency fund, establishment, 89-325
Acquisition of property by board, 89-312
Administration by water resources board, expenses of members, 89-311
Advisory committees, establishment by board, 89-312
    abolition of committee, 82A-1511
Contributions and appropriations, power of board to accept, 89-312
Definition of terms, 89-310
Expenses, payment from license and permit fees, 89-325
Liability of state and agents, not liable for acts of private persons, 89-330
License required, 89-313
    applications, review by board, 89-314
    exemptions from fee requirements, 89-314
    fee for license, 89-317
    issuance of license, 89-315
    qualifications of applicants, 89-315
    renewal of license, 89-316
    suspension or revocation, grounds for, procedure, 89-329
    term of license, 89-316
"Operation" defined, 89-319
Permits required, 89-313
    activities limited by terms of permit, 89-320
    fee, time of payment, 89-324
    issuance of permits, 89-318
    notice of intention to apply for permit, 89-320
        contents of notice, 89-321
        publication of notice, 89-322
    proof of financial responsibility by applicant, 89-323
    requirements for permit, 89-318
    separate permit for each operation, 89-319
    suspension or revocation, grounds for, procedure, 89-329
Powers of department, 89-312
Records of operations by licensees, contents, open to public, 89-326, 89-328
Reports of operations, requirements, open to public, 89-327, 89-328
Research and development projects, establishment of standards by rule, 89-312.1
Violation of act, misdemeanor, 89-331
"Weather modification and control" defined, 89-310

WEEDS

    See COUNTIES, Weed control

WEIGHTS AND MEASURES

American and metric systems recognized, 90-154
Citation of act, 90-194
Commodities, sale of
    berries and small fruits, 90-184
    bread, 90-178
    bulk delivery, duplicate delivery ticket required, 90-182
    butter, oleomargarine and margarine, 90-179
    flour, cornmeal and hominy grits, 90-181
    fluid dairy products, 90-180
    furnace and stove oil, delivery ticket, 90-183
    in general, 90-170
        exceptions, 90-170
    meat, poultry and seafood, sale by weight, 90-177
    method of sale, 90-170 to 90-174
        advertising of packages, statement of quantity, 90-174
        misleading packages, 90-173
        packages, 90-170
        random packages, declarations of unit price, 90-172
    misrepresentation of price prohibited, 90-176
    net weight, use of in sales, 90-175
Conflicting laws repealed, 90-193
Construction of contracts, 90-185

References are to Title and Section numbers

WEIGHTS AND MEASURES (Continued)
Definitions, 90-153
Definitions of special units of measure, 90-155
Field standards, 90-157
Fractional parts of unit of weight or measure, 90-185
Injunction, 90-189
National Bureau of Standards' definitions, tables and equivalents recognized, 90-154
Offenses and penalties, 90-188
hindering or obstructing officer, 90-186
impersonation of officer, 90-187
prosecutions declared valid, 90-191
Presumptive evidence, 90-190
Repeal of conflicting laws, 90-193
Separability clause, 90-192
State sealer
abolition of position and transfer of functions, 82A-402
arrest without warrant, 90-167
chief sealer, 90-158
powers and duties, 90-168
commissioner of agriculture as, 90-158
commodities, regulations as to, 90-170
complaints, investigation of, 90-163
correct weights and measures, marking as, 90-166
deputies, appointment of, 90-158
powers and duties, 90-168
enforcement orders, 90-165
general powers and duties, 90-159
incorrect weights and measures
disposition of, 90-166
duty of owners, 90-169
injunction, authorized to apply for, 90-189
inspection of packages, 90-164
police powers, 90-167
regulations, 90-160
seizures for use in evidence, 90-167
specific powers and duties, 90-160
testing, 90-161, 90-162
State standards, 90-156
Weighing devices, annual license required, application, fees, forfeiture, 90-160.1

WESTERN INTERSTATE CORRECTIONS COMPACT
Adoption, contents, 95-2308 to 95-2312

WILLS
Devise or bequest to trustee of inter vivos trust established by testator
effect of entire revocation of trust prior to death, 91-321
property not deemed held under testamentary trust, 91-321
validity, 91-321

WINTER WORK PROGRAMS
Definition of terms, 41-1901
Legislative access to minutes of committee, 41-1907
Municipal committees, composition and appointment, 41-1902
meetings of committee, 41-1904
minutes of committee, filing, 41-1907
officers of committee, 41-1904
service without compensation, 41-1903
terms of members, 41-1903
Promotion of program through advertising and public relations, 41-1905
State employment service to cooperate, 41-1906

WITNESSES
Affirmation in lieu of oath, M. R. Civ. P., Rule 43(d)
Coroner's inquest, subpoena of witness, compelling attendance, writing and filing testimony, 95-805, 95-806, 95-808

WITNESSES (Continued)
Criminal cases
detention of person as material witness, limitations on, 1972 Const., II, 23
expenses of witnesses, 95-1801
face to face confrontation, right to, 1972 Const., II, 24
indigent defendants, procedure for obtaining subpoenas, 95-1801
preliminary examination, exclusion or separation
recognizance by or deposition after examination, 95-1203, 95-1204
subpoena, requirements and form, 95-1801
right of accused to compulsory process, 1972 Const., II, 24
Fees payable to witnesses, 25-404
disbarment proceedings, 93-2020
Hostile witnesses, examination as on cross-examination, M. R. Civ. P., Rule 43(b)
Interpreters, M. R. Civ. P., Rule 43(f)
Masters, witnesses before, M. R. Civ. P., Rule 53(d)
Mileage allowances for use of own vehicle, 59-801
liability for approval of excess amount, 59-802
Offer of proof, recording in case testimony excluded, M. R. Civ. P., Rule 43(c)
Subpoena, criminal cases, 95-1801
Subpoena for attendance of witnesses, M. R. Civ. P., Rule 45(a)

WOMEN
Discrimination because of sex, protection against as civil right, 64-301
definition of terms, 64-302
misdemeanor, 64-303
Pregnant women, prenatal blood specimen required for serological test, 69-6702
administrative expense to be paid by department, 69-6707
birth certificate to state whether test made, 69-6709
certificate of laboratory, form, 69-6704
confidentiality of information, violation as misdemeanor, 69-6706
definition of terms, 69-6701
person attending pregnant woman to have specimen taken, 69-6702
physician to take specimen at first professional visit, violation as misdemeanor, 69-6702
reasonable fee for test authorized, 69-6703
results of test, to whom exhibited, 69-6705
submission of blood specimen to approved laboratory, 69-6702, 69-6703
follow-up procedures in respect to positive tests, 69-6703
positive tests to be reported to department, 69-6703
waiver of test by court, religious creed as basis, 69-6708

WORDS
Printing, 19-103.1

WORKMEN'S COMPENSATION
Access of board to employer's books and records, 92-820
Account in agency fund, holding in trust, 92-840
Administration fund established, deposits and disbursements, levy against industrial insurance account, basis, 92-116.1
Appeal to supreme court by claimant at expense of commission, 92-827
Assessment of insurers, 92-1005
Cardiovascular, pulmonary or respiratory diseases contracted in course of employment covered, 92-418, 92-418.1
Cessation of operation by employer, statement and return of deposit, 92-209
Compensation
biweekly payments, 92-715
deafness, occupational, 92-710
death benefits, 92-704.1
lump sum payments, 92-715
medical and hospital services, 92-706.1
occupational disease compensation, reduction by receipt of workmen's compensation, 92-1333
partial disability, 92-703.1

WORKMEN'S COMPENSATION (Continued)

Compensation (Continued)
permanent total disability, 92-702.1
schedule of specific injuries, 92-709
temporary total disability, 92-701.1
unreasonable delay or refusal to pay, increase in award, 92-824.1
Constitutional right to full legal redress for injury incurred in employment, 1972 Const., II, 16
Contractor as employer on contract work for public corporation, required compensation coverage, 92-206
Copy of testimony, exhibits, pleadings and records, furnishing to claimant without cost in event of action to review decision of board, 92-827
Corporate officer's election not to be bound as employee under act, 92-208
Deafness, occupational, 92-710.1
Definitions
average weekly wage, 92-423.2
employer, 92-410.1
independent contractor, 92-438.1
permanent partial disability, 92-440
permanent total disability, 92-441
temporary total disability, 92-439
wages, 92-423.1
Division of workmen's compensation created, 82A-1004
employees, when included in joint merit system, 92-121
functions transferred to division, 82A-1005
Election of employer and employee to come under act, binding effect, 92-204.1
certain covered employments, 92-209
failure to make election as misdemeanor, penalty, 92-207.1
"Employee" defined, 92-411
Employments covered by act, 92-207.1
Exempt employment, 92-202.1
Extraterritorial application, temporary employment in another state, 92-614
Fees of board, amounts and disposition, 92-119
Fellow servant liability for intentional and malicious act or omission causing injury, 92-204.1
Game wardens' retirement benefits supplemental to workmen's compensation, 68-1426
Independent contractors excluded from coverage, 92-411
Industrial accident board
abolition and transfer of functions, 82A-1005
investment functions, 82A-205
biennial report to governor, 92-118
ex officio members not to receive additional compensation, 92-108
members, 92-104
mine safety, 50-101 to 50-119—See MINES AND MINING, Safety
occupational disease act, 92-1301 to 92-1368—See OCCUPATIONAL DISEASE ACT
salary of appointed member, 92-104
silicosis payments, administration, 71-1002
transfer of records and payrolls to board, 71-1009
term of office of appointed member, 92-104
"Injury" defined, 92-418
Insurance policies subject to provisions of act, 92-1005
Insurance premium rates, 40-5601 to 40-5618—See INSURANCE, Workmen's compensation insurance premium rates
Insurer denying liability, notice required, time allowed, 92-615
costs and attorneys' fees assessed on claim found compensable, 92-616
Insurer's reserve for unearned premiums, 40-3008
Juveniles in delinquency prevention or rehabilitation programs, coverage, 92-411
Legal representation of board, 92-120
Medical and hospital services to be furnished separate and apart from compensation, 92-706.1
Partner as employee, coverage, 92-411
Plan No. 1, assessments against employer, 92-902

WORKMEN'S COMPENSATION (Continued)
Plan No. 2
agricultural employer, election to come under plan, 92-1102
assessments against employers, 92-1005
employers eligible to elect plan, 92-1001
form and manner of election, 92-1002
renewal certificates, delivery to board, 92-1006
Plan No. 3
account in agency fund, payments into, 92-1105
advanced rate for dangerous places of employment, 92-1105.1
default in payments by employer
action for collection of payments, 92-1114
cancellation of coverage by board, 92-1114
compromise of claim by board, 92-1114
injury to employee during default, 92-1115
remedies of employee, 92-1116
subrogation of state to employee's claim, 92-1116
disbursements from account in agency fund, 92-1122
dividends declared from surplus in account, 92-1110
employer election to come under plan, 92-1102
income from account in agency fund, crediting to account, 92-1123
payroll computation in covered employment, 92-1121
physician's examination fee, 92-1119
premiums paid by employers, 92-1101
rates for insurance, determination by board, 92-1105
reserve funds, investment, 92-1112
segregated moneys, accounting by treasurer, 92-1113
Presumption as to elections to be bound by act, 92-209
Public corporations, required compensation coverage, 92-206
Reciprocity with other states, 92-614
Record of proceedings and hearings, 92-827
Records of employer, inspection by board, 92-820
Rehabilitation of injured workmen
account in agency fund, payments to and from, 92-1406
administrative expenses not paid by funds provided, 92-1406
completion of rehabilitation, certification to industrial accident board, 92-1402
expenses payable to workman receiving training, 92-1403
masculine includes feminine, 92-1404
reconsideration of award after rehabilitation, 92-1402
reference of workmen to vocational rehabilitation division, 92-1401
Relief recipients working for county, coverage, 71-307, 92-411
Sole proprietor as employee, coverage, 92-411
Subcontractor's employee, liability of prime contractor for injuries to, indemnity, 92-410.1
Subrogation against negligent third party, rights of employer, insurer and employee, 92-204.1
Subsequent injury fund for vocationally handicapped employees, limit of employer liability, liability of fund, assessment of insurers, 92-709.1
Vocational rehabilitation or other on-the-job trainees, coverage, 92-411

Y

YELLOWSTONE RIVER COMPACT
Appropriation statement filed with water conservation board for waters taken, 89-907
Information given to compact commission by water conservation board, 89-914
Records of water taken, filing with water conservation board, 89-909
Rules and regulations for enforcement of compact, 89-912
Transfer of powers to water conservation board does not impair obligations, 89-103.7
Weir or other measuring device, duty to install, 89-908

YOUTH FOREST CAMP
See STATE INSTITUTIONS, Juvenile facilities, 80-2202 et seq.

References are to Title and Section numbers

YOUTH GUIDANCE CENTERS
District youth guidance home program established, 10-1101
definition of terms, 10-1102
governmental aid to homes, 10-1104
federal assistance, 10-1111
nonprofit organizations authorized for establishment of homes, 10-1103
placement of juvenile in home by department of institutions, 10-1109
placement of juvenile in home by district court, 10-1105
continuing jurisdiction of district court, 10-1107
petition by juvenile for placement in home, 10-1106
support payments required from parents, 10-1108
purposes of program, 10-1101
rules and regulations, 10-1110
Joint centers, establishment by two or more counties, 16-1008B

Z

ZONING
See PLANNING AND ZONING

1231 1511

DOES NOT
CIRCULATE

STATE LAW LIBRARY
Justice Building
215 N. Sanders
Helena, Montana 59620

State Law Library Of Montana
KFM9030 1947 .A2
Revised codes of Montana, 1947, annotate
c. 1 Suppl 1973 76-95
3 0000 00035 9764